

PLAT NO. S/D 74-14 MAP NO. 5949

NAME LEISURE LIVING VENTURES FIRST ADDITION

LOCATION: On the north side of 13th St. North in an  
area west of Rock Road.

ENGINEER Van Doren-Hazard-Stallings

OWNER Leisure Living, Inc.

APPLICATION FILED 1-21-74

SKETCH PLAT FILED 1-21-74

PRELIMINARY FILED 2-11-74

S/D ACTION 2-21-74 *Approved*

FINAL FILED 3-11-74 3-25-74

S/D ACTION 3-21-74 *Deferred indef. 4.4.74 App.*

MAPC ACTION 4-11-74 *Approved*

BCC ACTION 7-23-74 *Approved*

RECORDED 7-31-74

REMARKS \_\_\_\_\_

Map No. 5949  
Sec. No. 7  
Twp. No. 27S  
Range 2E

Subdivision Report and Progress  
S/D No.: 74-14

Name: LEISURE LIVING VENTURES FIRST ADDITION  
General Location: On the north side of 13th St. North in an area west of Rock Road.  
Owner: Leisure Living, Inc.  
Address: 5920 E. Central 67208 Phone: 685-1446  
Subdivider: Van Doren-Hazard-Stallings  
Address: 260 N. Rock Rd. Phone: 686-7303  
Engineer/Surveyor: same as subdivider  
Address: Phone:

Application Received 1-21-74  
Conf. with Applicant none  
Sketch Plat Received 1-21-74  
Present Zoning AA  
Proposed Zoning R-6  
Letter of Intent verbal authorization given

PREL. PLAT RECEIVED 2-11-74  
S/D Comm. Action 2-21-74 approved

Dept. Report on Prel. 2-22-74

TRACING PROGRESS:  
Received 6-6-74  
Released  
Received  
Released

FINAL PLAT RECEIVED 2-11-74 3-25-74  
S/D Comm. Action 3-21-74 4-4-74 App  
Dept. Report on Final Referred indep.  
M.A.P.C. ACTION 4-11-74 App.  
Dept. Report on Final 4-11-74  
Letter on Irons Received N/A  
Title/Taxes Rec'd & Reviewed 3/5/74  
Final Review 7-14-74  
Referral to B.C.C. 7-14-74

B.C.C. ACTION 7-23-74 Approved  
Recorded 7-31-74

Comments:

4/10/74 print for M-F  
7/26/74 left message for Ed Flanagan (Leisure Living, Inc) that plat tracing can be picked up for recording.

REGISTER OF DEEDS  
SEDGWICK COUNTY, KANSAS

LEISURE LIVING VENTURES 1ST ADDN ADDITION was  
(Final Plat)  
filed for record on July 31, 1974

JOHN HALE  
Register Of Deeds

T9-328

*J*  
*8-13-74*

**LEISURE LIVING, INC.**

5900 EAST CENTRAL / WICHITA, KANSAS 67208 / (316) 685-1448

March 5, 1974

Metropolitan Area Planning Commission  
104 S. Main  
Wichita, Kansas 67202

ATTENTION: Mr. Curtis L. Newby

RE: Leisure Living Venture  
First Addition


Dear Mr. Newby:

In the February 21, 1974 meeting of the MAPC, we were requested to furnish a copy of the homeowners declaration. The drafting of this document has not yet been completed, however, it is our intention to use similar rules, regulations and covenants that were filed for The Heritage, our development on the adjacent property. The new documents will be revised only as is necessary to reflect the differences between the two developments.

The new documents should be completed in approximately 30 days when they will be required as part of the filing of the final plat. I hope that the attached documents will meet your requirements. Please call me directly if you wish to discuss this further.

Sincerely,

LEISURE LIVING, INC.

  
J. Flanagan  
Director of Construction

EF/rb

CC: Willard B. Thompson

Encl.



DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

FOR

RAINTREE VILLAGE

- present provisions  
1st Add -  
Required with filing of this  
plat. -  
7/5/74

THIS DECLARATION, made on the date hereinafter set forth,  
by LEISURE LIVING VENTURES, a Joint Venture (hereinafter referred  
to as "Declarant"),

WITNESSETH:

WHEREAS, Declarant is the owner of the following-described  
real property, to-wit:

Leisure Living Ventures First Addition, an  
Addition to Wichita, Sedgwick County, Kansas,  
according to the recorded Plat thereof.

WHEREAS, Declarant will convey the above property, subject  
to the protective covenants, conditions, restrictions, easements,  
reservations, liens and charges as hereinafter set forth.

NOW, THEREFORE, Declarant hereby declares that said property  
shall be held, sold and conveyed subject to the following easements,  
restrictions, covenants and conditions, all of which are for the  
purpose of enhancing and protecting the value, desirability and  
attractiveness of the property. These easements, covenants, re-  
strictions and conditions shall run with the land and shall be bind-  
ing on all parties having or acquiring any right, title or interest  
in the property or any part thereof, and shall inure to the benefit  
of each owner thereof.

ARTICLE I

Definitions

Section 1. "Association" shall mean and refer to RAIN TREE  
VILLAGE HOMEOWNER'S ASSOCIATION, INC., a Kansas non-profit corpora-  
tion, its successors and assigns.

Section 2. "Property" shall mean and refer to that certain  
real property hereinbefore described.

Section 3. "Common Area" (sometimes referred to as "common area and facilities") shall mean and include all of the Property owned or to be owned by the Association for the common use and enjoyment of the owners, and shall specifically include all of the Reserve Area shown on the recorded Plat of the Property and all improvements, recreational facilities, plantings and landscaping situated and placed or to be situated and placed thereon except those utilities placed thereon by the City of Wichita. Each numbered lot (and all improvements thereon) as shown on the Plat of the Property is specifically excluded from the definition of "common area".

Section 4. "Lot" shall mean and refer to each numbered lot as shown upon the recorded Plat of LEISURE LIVING VENTURES FIRST ADDITION.

Section 5. "Development" shall mean the entire undertaking and development of the Property. Such development shall be known as "RAINTREE VILLAGE".

Section 6. "Member" shall mean and refer to every person or entity who holds membership in the Association.

Section 7. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any lot which is a part of the Property, but excluding those having such interest merely as security for the performance of an obligation.

Section 8. "Declarant" shall mean and refer to LEISURE LIVING VENTURES, a Joint Venture, and its successors and assigns.

Section 9. "Board" shall mean the Board of Directors of the Association.

Section 10. "Articles" and "Bylaws" shall mean Articles of Incorporation and Bylaws of the Association, as the same may be amended from time to time.

Section 11. "Development Documents" refers to those documents by means of which RRAINTREE VILLAGE is established, consisting of

(a) this Declaration of Covenants, Conditions and Restrictions,  
(b) the Articles of Incorporation and Bylaws of the Association,  
and (c) the Rules and Regulations of the Association, all as may  
from time to time be amended.

#### ARTICLE II

##### Membership

Declarant and every person or entity who is a record owner  
of a fee or undivided fee interest in any Lot shall be a member of  
the Association. The foregoing is not intended to include persons  
or entities who hold an interest merely as security for the perform-  
ance of an obligation. No Owner shall have more than one membership  
per Lot. Membership shall be appurtenant to and may not be separated  
from ownership of any Lot. Ownership of a Lot shall be the sole  
qualification for membership.

#### ARTICLE III

##### Voting Rights

The Association shall have one class of voting membership  
which shall consist of all owners including the Declarant. Such  
owners shall be entitled to one vote for each Lot in which they hold  
the interest required for membership by Article II. When more than  
one person holds such interest in any Lot, the vote for such Lot  
shall be exercised as they among themselves determine. In no event  
shall more than one vote be cast with respect to any Lot.

#### ARTICLE IV

##### Property Rights

Section 1. Members Easements of Enjoyment - Every member  
shall have a right and easement of enjoyment in and to the Common  
Area and facilities and such easement shall be appurtenant to and  
shall pass with the title to every Lot, subject to the following  
provisions:

- A. The right of the Association to limit the number of guests  
of members;

- B. The right of the Association to charge reasonable admission and other fees for the use of any recreational facility situated upon the Common Area;
- C. The right of the Association, in accordance with its Articles and Bylaws and provisions hereof, to take title subject to any mortgage, as provided in Section 3 of this Article, or to borrow money for the purpose of improving the Common Area and facilities and in aid thereof to mortgage said property, the rights of such mortgagee in said properties being subject to the rights of the homeowners hereunder. In the event of a default upon any such mortgage, the lender shall have the right, after taking possession of the properties, to charge admission and other fees as a condition to continued enjoyment by the members;
- D. The right of the Association to suspend the voting rights and right to use of the recreational facilities by a member for any period during which any assessment against his Lot remains unpaid; and for a period not to exceed sixty (60) days for any infraction of its published rules and regulations;
- E. The right of the Association or Declarant to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by two-thirds of its members; provided that the Association or Declarant may grant an easement or easements to the City of Wichita for storm sewer or other purposes on such part or parts of the Common Area as may be acceptable to the Association or Declarant and to the City without vote of the membership if the Board or Declarant determines such grant or grants to be advisable.

Section 2. Delegation of Use - Any member may delegate, in accordance with the Bylaws, his right of enjoyment to the Common Area and facilities to the members of his family, subject to such rules and regulations as the Association may, from time to time establish.

Section 3. Title to the Common Area - The Declarant hereby covenants for itself, its successors and assigns, that it will convey title to the Common Area to the Association on or before Declarant's having sold all of the Lots to bona fide purchasers, or on such earlier date as Declarant deems advisable. In no event shall such conveyance be made later than the 31st day of December, 1979. Said conveyance may be subject to any mortgage given by Declarant to provide funds for constructing improvements on the Common Area.

ARTICLE V

Assessments

Section 1. Creation of the Lien and Personal Obligation of Assessments. Subject to the provisions of Sections 7 and 10 of this Article V, the Declarant, for each Lot owned by it, hereby covenants, and each owner of any Lot, by acceptance of a deed therefor whether or not it shall be so expressed in any such deed is deemed to covenant and agree to pay to the Association: (a) annual assessments or charges, and (b) special assessments for capital improvements, such assessments to be fixed, established and collected from time to time as hereinafter provided. The annual and special assessments, together with such interest thereon, shall be a charge and a continuing lien upon the property against which each such assessment is made, from and after the hereinafter described notice is filed of record. A notice claiming such lien may be filed for record by the Association (or Declarant while it continues to manage the Association) in the office of the Register of Deeds, Sedgwick County, Kansas, but in no event shall any such claim of lien be filed until such sums remain unpaid for not less than thirty (30) days after the same shall become due. Such a claim of lien shall also secure all assessments which come due thereafter until the claim of lien is satisfied. Each owner shall be liable for his portion of each assessment coming due while he is the owner of a Lot and his grantee shall be jointly and severally liable for such portion thereof as may be due and payable at the time of a conveyance but without prejudice to the rights of the grantee to recover from the grantor the amounts paid by the grantee therefor; provided, however, that any such grantee shall be entitled

(for a reasonable charge) to a statement from the Association's Board of Directors or its duly authorized Manager setting forth the amount of the unpaid assessments against the grantor and such grantee shall not be liable for, nor shall the Lot conveyed be subject to a fine for, any unpaid assessments against the grantor in excess of the amount therein set forth. The purchaser of a Lot at a judicial or foreclosure sale shall be liable only for assessments coming due after the date of such sale.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively for the purpose of promoting the recreation, health, safety and welfare of the residents and owners of the Property and in particular for the improvement and maintenance of the Common Area and facilities and services devoted to this purpose and related to the use and enjoyment of the Common Area and facilities, and for the exterior maintenance and other maintenance to be provided by the Association as set forth in Article X. Such assessments shall include, but shall not be limited to, funds for the actual costs to the Association of all administration, insurance, taxes, repairs, replacements and maintenance of the Common Area and facilities as may be required by the Declaration, payment of any debt service upon mortgages to which the common elements or improvements and personal property appurtenant thereto, may be subjected, as may from time to time be authorized by the Association or its Board of Directors. Other facilities and activities to be paid for by means of such assessments include management fees, compensation for such personnel and agents and experts as shall be required for the proper administration and operation of the development, mowing grass, caring for the grounds, swimming pool and other recreational facilities, landscaping, exterior maintenance to residences, garbage pickup and other services furnished to residences by the Association and which are not billed direct to the residence owners, and other charges as may be required by this Declaration or that the Association or its Board of Directors shall determine to be necessary to meet the primary purposes of the Association, including the establishment and maintenance of a reserve for repairs,

replacements and maintenance, debt service and other charges as specified herein.

Section 3. Annual Assessments. The initial annual assessment shall be \$25.00 for each Lot which is part of the property, which said annual assessment shall continue and be in effect until the 31st day of December of the year following the year in which the first Lot is conveyed to an owner. Such sum shall be in addition to the \$100.00 which each owner agrees to pay in his Agreement for Purchase as and for a non-recurring capital contribution to the original operating fund. Thereafter, after a consideration of the projected financial needs and other requirements of the Association as provided for and enumerated in Section 2 of this Article V, the Board of Directors of the Association shall fix, annually, the amount of succeeding annual assessments in accordance with Section 7 of this Article V and in accordance with the Bylaws of the Association.

Section 4. Special Assessments for Capital Improvements. In addition to the annual assessments authorized above, the Association's Board of Directors may levy special assessments for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of capital improvements upon the Common Area and facilities, including the necessary fixtures and personal property related thereto, and/or providing debt service on any mortgage to which the Common Area is subjected and which is or had been given to fund improvements on the Common Area; provided that any such assessment, after Declarant has conveyed the Common Area to the Association, shall have the assent of two-thirds (2/3rds) of the votes of the owners who are voting in person or by proxy at a meeting duly called for this purpose, written notice of which shall be delivered to all residences or sent to all owners not less than thirty (30) days nor more than sixty (60) days in advance of the meeting setting forth the purpose of the meeting.

Section 5. Rate of Assessment. Subject to the provisions of Sections 7 and 10 of this Article V, and unless otherwise expressly provided herein, each owner's share of the total annual

assessments and the total special assessments shall be equal.

Section 6. Quorum for any Action Authorized Under Sections 3 and 4. At the first meeting called, as provided for in Sections 3 and 4 of this Article V, the presence at the meeting of owners or of proxies entitled to cast forty percent (40%) of all the votes of the Association shall constitute a quorum. If the required quorum is not forthcoming at the first meeting called, not more than two subsequent meetings may be called, subject to the notice requirement set forth in said Sections 3 and 4, and the required quorum at any such subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 7. Date of Commencement of Annual Assessments: Due Dates. The annual assessments provided for in this Article V shall be established on a calendar year basis and shall commence as to each Lot conveyed by the Declarant to another owner on the date of each such conveyance. The initial annual assessment for each Lot thus conveyed shall be adjusted according to the number of days remaining in the calendar year. Except for that portion of each such adjusted assessment as may be attributable to the number of days remaining in the month of conveyance which shall be paid to the Association at the time of such conveyance, each such adjusted assessment shall be paid by the owner to the Association in equal monthly installments commencing on the first day of the month following such conveyance. Thereafter, the Association's Board of Directors shall fix the amount of the annual assessment against each Lot and when possible deliver written notice of same to each residence or send written notice of same to every owner subject thereto at least thirty (30) days in advance of each annual assessment period. Unless otherwise provided by the Board of Directors, one-twelfth (1/12th) of the annual assessment for each Lot shall become due and payable on the first day of each month during the assessment period and shall be paid to the Association when due without further notice from the Association.

Section 8. Effect of Non-Payment of Assessments: Remedies

of the Association. Any assessments which are not paid when due shall be delinquent. If the assessment is not paid within thirty (30) days after the due date, the assessment shall bear interest from the date of delinquency at the rate of ten percent (10%) per annum. The Association may bring an action at law against the owner personally obligated to pay the same or foreclose its lien against such owner's Lot. Each owner, by his acceptance of a deed to a Lot, vests in the Association or its agents the right and power to bring all actions against him personally for the collection of such charges as a debt or foreclose the aforesaid lien in the same manner as other liens for the improvement of real property. The lien provided for in this Article V shall be in favor of the Association and shall be for the benefit of all other owners. The Association, acting on behalf of the owners, shall have the power to bid on the Lot at any foreclosure sale and to acquire, hold, lease, mortgage or convey the same. No owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area and facilities or abandonment of his residence or Lot.

Section 9. Priority of Lien. The lien of the assessments provided for in this Article V shall be prior and superior to all other charges or liens which may thereafter arise or be imposed on the property excepting only such liens for taxes or other public charges as are by law made superior. The sale or transfer of any lot shall not affect the assessment lien.

Section 10. Exempt Property - The following property subject to this Declaration shall be exempt from the assessments created herein: (i) all properties dedicated to and accepted by a local public authority; (ii) the Common Area and facilities; and (iii) all Lots, fee simple title to which is vested in Declarant, which exemption as to each particular Lot shall expire on the first day of the first month following conveyance of such Lot to an Owner.

Notwithstanding any other provision hereof, it is expressly understood that so long as Declarant owns one or more Lots, it shall be Declarant's responsibility to maintain the same.

ARTICLE VI

Use of Funds

Section 1. The Association shall apply all funds received by it pursuant to these covenants, and all other funds and property received by it from any source, including the proceeds of the loans referred to in Section 2 and the surplus funds referred to in Section 3, to the following, pro tanto and in order stated:

- (1) the payment of all principal and interest, when due, on all loans (a) to which the Common Area is subjected upon its conveyance to the Association by Declarant, or (b) borrowed by the Association to the extent required under any agreement with Note Holders referred to in Section 2 hereof; and
- (ii) the costs and expenses of the Association; and
- (iii) for the benefit of the Property, Owners and residents by devoting the same to the acquisition, construction, reconstruction, conduct, alteration, enlargement, laying, renewal, replacement, repair, maintenance, operation and subsidizing of any or all projects, services, facilities, studies, programs, systems and properties relating to any one or more of the following: Common area and facilities; reserves; open space and green belts; recreational facilities or services; drainage systems, streets, roads, walkways, curbing, gutters, sidewalks, trees, flowers and landscaping, fountains, benches, shelters, directional and informational signs, walkways; street, road and highway lighting facilities; parks, swimming pool or pools, playgrounds, and other related or unrelated recreational facilities; and any and all other improvements, facilities and services that the Board shall find to be necessary, desirable or beneficial to the interest of the Property, Owners and residents.

Section 2. In order to secure the repayment of any and all sums borrowed or assumed by it from time to time or to which any property received by the Association is subjected, the Association is hereby granted the right and power:

- (1) to assign and pledge all revenues received, and to be received, by it under any provision of this Declaration, including, but not limited to, the proceeds of the assessments payable hereunder;
- (ii) to enter into agreements with Note Holders with respect to the collection and disbursements of funds, including, but not limited to agreements wherein the Association covenants:
  - (a) to establish sinking funds and/or other security deposits;
  - (b) to apply all funds received by the Association first to the payment of all principal and interest on such loans, or to apply the same to such purpose after providing for costs of collection;

(c) to provide for the custody and safeguarding of all funds received by the Association.

The amount, terms, rate or rates of all borrowing and the provisions of all agreements with Note Holders shall be subject solely to the decision of the Board acting in its absolute discretion.

Section 3. The Association shall not be obligated to spend in any calendar year all the sums collected in such year by way of assessments, or otherwise, and may carry forward, as surplus, any balances remaining, or it may elect to refund (with the consent of the Note Holders) any such surplus; nor shall the Association be obligated to apply any such surpluses to the reduction of the amount of the assessments in the succeeding year, but may carry forward from year to year such surplus as the Board in its absolute discretion may determine to be desirable for the greater financial security of the Association and the effectuation of its purposes.

#### ARTICLE VII

##### Architectural Control

Except with respect to Declarant's initial construction, no building, fence, wall or other structure shall be commenced, erected or maintained upon the Property, nor shall any exterior addition to or change or alteration therein be made until the plans and specifications showing the nature, kind, shape, height, materials, and location of the same shall have been submitted to and be approved in writing as to harmony of external design and location in relation to surrounding structures and topograph by Declarant or the Board of Directors of the Association, or by an architectural committee composed of three (3) or more representatives appointed by the Board. In the event said Board, or its designated committee, fails to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to it, approval will not be required and this Article will be deemed to have been fully complied with. No member of the Board or committee shall be liable to any party for refusing to accept any proposed improvement submitted to it or to him.

The Board, or its designated Committee, may adopt rules governing the form and content of plans and specifications to be submitted for approval.

#### ARTICLE VIII

##### Use Restrictions

Section 1. Residential Purposes. All residences contemplated in the development shall be, and the same hereby are, restricted exclusively to single family residential use. No structures of a temporary character, trailer, basement, tent, shack, carport, garage, barn or other out-building shall be used as a residence on any portion of the property at any time either temporarily or permanently.

Section 2. Estate in Fee Simple. Each Lot shall be conveyed as a separately designated and legally described estate in fee simple subject to the terms, conditions and provisions hereof.

Section 3. Construction and Sale Period. Notwithstanding any provisions contained herein to the contrary, it shall be expressly permissible for the Declarant or the builder or builders of residences and structures on the Common Area, to maintain, during the period of construction and sale of said residences and construction of said structures, upon such portion of the property as the Declarant may deem necessary, such facilities as in the sole opinion of the Declarant may be reasonably required, convenient or incidental to such construction and sale of residences, including, but without limitation, storage areas, construction yards, signs, model residences, construction offices, sales offices and business offices.

Section 4. Animals and Pets. No animals, livestock or poultry of any kind shall be raised, bred or kept on any part of the property, except that dogs, cats or other household pets may be kept by the respective owners in their respective residences provided that they are not kept, bred or maintained for any commercial purpose and do not endanger the health or, in the sole discretion of the Association's Board of Directors, unreasonably disturb the owner of any residence or any resident thereof. In no event shall there

be any kennels or dog runs on the patios or yards of any residence or in the common areas.

Section 5. Signs and Business Activities. No signs, advertising or otherwise, billboards, unsightly objects, or nuisances shall be erected, placed or permitted to remain on the property, nor shall the property be used in any way or for any purpose which may endanger the health of or unreasonably disturb the owner of any residence or any resident thereof. No business activities of any kind whatever shall be conducted in any building or in any portion of the property; provided, however, the foregoing covenants shall not apply to the business activities, signs and billboards of the Declarant, its agents or assigns during the construction and sale period, or of any resident manager thereafter.

Section 6. Clotheslines, Garbage Cans, Etc. All clotheslines, equipment, garbage cans, service yards, woodpiles and storage piles shall be kept within the owner's area so provided by Declarant for same, screened by adequate planting or fencing so as to conceal them from view of neighboring residences and streets. All rubbish, trash and garbage shall be regularly removed from the premises and shall not be allowed to accumulate thereon. All clotheslines shall be confined within the patio areas.

Section 7. Plantings, etc. Except in the individual enclosed patio or enclosed yard portions adjoining the residences, no planting or gardening shall be done, and no fences, hedges or walls shall be erected or maintained upon the Property except such as are installed in accordance with the initial construction of the buildings located thereon or as approved by the Association's Board of Directors or their designated representatives.

Section 8. Parking. No vehicle belonging to an Owner, or to a member of the family or guest, tenant or employee of an Owner, shall be parked in such manner as to impede or prevent ready access to another Owner's garage. The Owners, their employees, servants, agents, visitors, licensees and the Owner's family will obey the parking areas, and drives and any other traffic regulations promul-

gated in the future for the safety, comfort and convenience of the Owners. All garage doors shall at all times remain closed, except to afford access to and from the garage. No vehicle which cannot operate on its own power shall remain on any of the common property for more than twenty-four (24) hours, and no repair of vehicles shall be made within the property.

#### ARTICLE IX

##### Grant of Easements

There is hereby created for the benefit of certain Lots in the development, and for the Owner or owners thereof, an easement extending approximately five feet into the adjacent lot. Each such lot benefited by such an easement is deemed a dominant Lot and each such Lot subjected to and burdened by such easement is deemed a servient Lot.

Those easements herein created are more specifically described in Exhibit "C" attached hereto and incorporated herein by this reference, each reference being to the respective dominant and servient lot and that portion of each servient lot which is the object of the grant of easement herein. Each easement on the servient lot is for the benefit of and appurtenant only to that lot which is adjacent and described in Exhibit "C" as being the dominant lot for that particular grant. The owner of the dominant lot is hereby granted and assigned the full right to use the easement on the servient lot as if such owner was the titleholder thereof, subject, however, to the right hereby granted and assigned to the owner of the servient lot to have full right of ingress and egress to and from said easement and to come upon, across and along the easement for the sole purpose of repairing the improvements of the servient owner constructed upon the servient lot. The owner of the dominant lot and the owner of the servient lot shall do nothing to interfere with the rights granted hereunder. The rights granted hereunder are intended to inure to and be binding upon the owners of each lot and their respective successors in interest, assigns, personal representatives, administrators and heirs, and such owners, together with the remain-

ing occupants of each improvement constructed upon the dominant lot and servient lot, are hereby granted the above rights, duties and obligations.

The owner of the dominant lot shall maintain the area covered by the easement and all improvements situated therein or thereon (except the fencing, which is the responsibility of the Association as provided in Article X) and shall indemnify and hold the owner of the servient lot free and harmless from all loss, damage or liability incident to the use by the dominant owner or by any permissive user of the easement, excepting, however, any loss, liability or damage arising out of the negligence of the owner of the servient lot.

#### ARTICLE X

##### Exterior Maintenance

Section 1. Exterior Maintenance. In addition to maintenance of the Common Area and facilities, the Association shall provide exterior maintenance upon each Lot and the improvements thereon, as follows: paint, repair, replace and care for roofs, gutters, downspouts, exterior building surfaces, fencing (both sides), and other exterior improvements, and to provide lawn and yard care outside of the enclosed fences, patios and defined yard areas. (The care and maintenance of the Owner's patio and yard areas, and interiors of the residences, exterior doors, windows, glass walls, chimney flues, and structural items, shall be the sole responsibility of the Owners).

Section 2. Assessment of Cost. The cost of the maintenance to be provided pursuant to Section 1 above shall be added to and become a part of the annual assessment to which the Lots in the development are subjected under Article V hereof and as part of such annual assessment or charge, it shall be a lien and obligation of the respective Owners and shall become due and payable in all respects as provided in Article V hereof. Such cost for the maintenance to be provided under Section 1 above shall be uniformly and equally assessed to each Lot in the development, even if the cost of maintenance to each residence is not the same.

Section 3. Access at Reasonable Hours. For the purpose solely of performing the exterior maintenance required by this Article, the Association through its duly authorized agents or employees shall have the right, after reasonable notice to the Owner, to enter upon any Lot or exterior of any residence at reasonable hours on any day except Sunday.

## ARTICLE XI

### Administration

Section 1. Responsibility for Administration. Subject to the provisions of Section 4 of this Article XI the administration of RAINTREE VILLAGE, the maintenance, repair, replacement and operation of the Common Area and facilities and those acts required of the Association by the development documents shall be the responsibility of the Association. Such administration shall be governed by the development documents. The duties and powers of the Association shall be those set forth in the development documents together with those reasonably implied to effect the purposes of the Association and the development. Such duties and powers shall be exercised in the manner provided by the development documents.

Section 2. Management Agreements. The Association shall be empowered to enter into such management agreements as may be necessary or desirable for the administration and operation of the development.

During his tenure, the person with whom the Association contracts for the administration and operation of the development (hereinafter sometimes referred to as the "Manager") shall exercise all the powers and shall be responsible for the performance of all the duties of the Association as provided for in the development documents, excepting those powers and duties specifically and exclusively assigned to the officers, directors or members of the Association by the development documents. The Manager shall be a responsible individual or corporation, as the Board of Directors shall determine, having experience adequate for the management of a development of this type and shall be bonded in such amount as the

Board of Directors shall reasonably require. Any such Manager may be Declarant, or either venturer of Declarant or a corporation or other entity owned wholly or in part by either venturer of Declarant or any stockholder of either such venturers, or the Manager may be a member or director of the Association.

Section 3. Limitation of Liability; Indemnification. Notwithstanding the duty of the Association to maintain, repair and replace parts of the Common Area and facilities, the Association shall not be liable for injury or damage caused by any latent condition of the Common Area and facilities or for injury caused by the elements, owners or other persons, nor shall any officer or director of the Association be liable to any owner for injury or damage caused by such officer or director in the performance of his duties unless due to the willful misfeasance or malfeasance of such officer or director. Each officer and director of the Association shall be indemnified by the owners against all expenses and liabilities, including attorneys' fees, reasonably incurred or imposed upon him, in connection with any proceeding to which he may be a party or in which he may become involved by reason of his being or having been an officer or director of the Association, or any settlement, whether or not he is an officer or director of the Association at the time such expenses and liabilities are incurred, except in such cases where the officer or director is adjudged guilty of willful misfeasance or malfeasance in the performance of his duties; provided that in the event of a settlement, the indemnification shall apply only when the Board of Directors approves such settlement and reimbursement as being for the best interests of the Association.

Section 4. Administration by Declarant. Notwithstanding anything contained herein to the contrary, the Declarant shall be responsible for the administration of the development and the Association will not begin to function through its other members until such time as the Declarant shall have conveyed all of the Lots made subject to this Declaration to the respective purchasers of same, at which time such fact shall be certified to the Association by the Declarant, and at which time the management of the development shall

be delivered to the Association, together with all books and accounts, which shall be in balance; provided, however, that the Declarant may, at its option and in the exercise of its sole discretion, deliver management of the development to the Association at such earlier or later date as may be selected by the Declarant. Until such time, the duties and powers of the Association, including those of the Board of Directors, as specified in the development documents, shall be performed by the Declarant and/or a manager employed by the Declarant on behalf of the Association (as provided for in Section 2 of this Article XI and as herein expressly authorized) at a rate of compensation which, under the circumstances and in the sole discretion of the Declarant, shall be reasonable in amount. Such compensation, if any, shall be paid as a recurring common expense of the Association and out of the annual assessments provided for in Article V hereof and not in lieu thereof or in addition thereto.

#### ARTICLE XII

##### General Provisions

##### Section 1. Amendments.

A. This Declaration may be amended by Declarant at any time and from time to time prior to the sale of any Lots hereunder, without limitation.

B. After the first Lot is sold and until all Lots in the development are sold by Declarant, this Declaration may be amended by Declarant in a manner which does not materially alter or impair the intended development of the property as a single-family residential community. Any such amendment shall become effective (a) after written notice to the Owners, and (b) upon its filing as hereinafter provided.

C. After all Lots are sold by Declarant, this Declaration may be amended only upon an affirmative vote of the Owners holding seventy-five percent (75%) or more of the total authorized membership vote.

D. Any amendment made pursuant to subparagraph A hereof

shall be effected by its recording in the office of the Register of Deeds, Sedgwick County, Kansas.

E. Any amendment made pursuant to subparagraph B hereof shall be effected by its recording in the office of the Register of Deeds, Sedgwick County, Kansas, together with a certification that written notice thereof was given by Declarant to the Owners.

F. Any amendment adopted after all of the Lots are sold by Declarant shall be effected (a) by the Association recording a written amendment therefor in the office of the Register of Deeds, Sedgwick County, Kansas, with such document certifying that such amendment had been approved by an affirmative vote of the Owners holding seventy-five percent (75%) or more of the total authorized membership vote, or (b) by the recording of an Amendment actually signed by Owners holding seventy-five percent (75%) or more of the total authorized membership vote.

G. Any amendment effected as set forth above, either, by Declarant or by the Association, shall be signed by such corporation's president or vice president and attested by its secretary or assistant secretary.

H. Notwithstanding the foregoing, if any proposed amendment to this Declaration would materially affect the rights of any existing mortgage holder or holders, the amendment shall be effective as to it or them only upon its or their written consent thereto.

Section 2. Covenants Running with the Land. All original and future owners, tenants, and occupants of the residences shall be subject to and shall comply with the provisions of this Declaration, the Articles and Bylaws of the Association which are hereto attached as Exhibits "A" and "B" and made a part hereof, and all rules and regulations adopted pursuant to the Bylaws, as such instruments may be amended from time to time, which provisions shall constitute covenants running with the land and with every part thereof and every interest therein and shall be binding upon each and every person having at any time an interest or estate in or to any residence to

exactly the same extent and with exactly the same effect as though all of said provisions were recited and stipulated in each deed or conveyance of any and every residence. Accepting any deed to or any conveyance or transfer of any residence, or entering into any agreement relating to any residence, or entering upon or occupying any residence shall constitute an irrevocable acceptance of this Declaration, the Articles and Bylaws, and all rules and regulations issued pursuant thereto, as from time to time amended.

Section 3. Maintenance of Open Spaces in Event of Association's Failure to do so. Upon the failure of the Association to properly and adequately maintain any part of the open space within the RAINTREE development, the City of Wichita may cause notice to be served on the Association of its failure to so maintain, setting out the manner in which it has failed to perform, and granting it ten days within which to perform all of the items designated in said notice. After said ten days the City may enter upon the property to perform the work described in said notice of deficiency, and the cost of such work performed by the City may be assessed against the property in the same manner as provided by law for such assessment and said assessment may be established as a lien upon the land. Should the Association, upon receipt of said notice, take exception to any deficiencies designated therein, the Association may within the ten-day period appeal to the Board of City Commissioners for a hearing on the propriety of the contents of said notice, and until said appeal is heard and determined the matter shall be stayed.

Section 4. Duration. The covenants and restrictions hereof, as the same may from time to time be amended, shall inure to the benefit of and be enforceable by the Association, or the Owner of any land subject hereto, their respective legal representatives, heirs, successors, and assigns, for a term of thirty-five (35) years from the date hereof, after which time said covenants shall be automatically extended for successive periods of ten (10) years unless an instrument signed by the then-Owners of three-fourths (3/4ths) or more of the Lots has been recorded, agreeing to terminate said covenants and restrictions in whole or in part.

Section 5. Enforcement. Enforcement of these covenants and restrictions shall be by any proceeding at law or in equity against any person or persons violating or attempting to violate any covenant or restriction, either to restrain violation or to recover damages, and against the land to enforce any lien created by these covenants; and failure by the Association or any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 6. Assignability. Declarant shall be empowered to assign its rights hereunder to any successor and upon such assignment, Declarant shall thereafter be released of all obligations hereunder and the successor shall have all the rights and be subject to all the duties of Declarant hereunder and shall be deemed to have agreed to be bound by all provisions hereof, to the same extent as if the successor had been an original party instead of Declarant, and all references herein to Declarant shall refer to such successor. Any such assignment shall be accepted by the successor under a written agreement pursuant to which the successor expressly assumes all duties and obligations of Declarant. If for any reason Declarant shall cease to exist without having first assigned its right hereunder to a successor, the covenants, easements, charges and liens imposed hereunder shall nevertheless continue, and any Owner may petition a court of competent jurisdiction to have a trustee appointed for the purpose of organizing a successor corporation or entity and assigning the rights of Declarant hereunder with the same force and effect, and subject to the same conditions, as provided in this Section 6 with respect to an assignment and delegation by Declarant to a successor.

Section 7. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no wise affect any other provisions which shall remain in full force and effect.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has hereunto set its hand and seal this 5<sup>th</sup> day of

July, 1974.

LEISURE LIVING VENTURES, a Joint Venture

BY:

NORWIN DEVELOPMENT CORPORATION

By Norwin Lee Aronfeld President

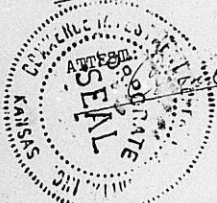
COMMERCE INVESTMENT COMPANY OF WICHITA, INC.

By James E. Atherton Vice President

All of the Joint Venturers thereof



Robert T. High



M. Sealey

STATE OF KANSAS )  
SEDGWICK COUNTY ) ss.

BE IT REMEMBERED that on this 5 day of July, 1974, before me, the undersigned, a Notary Public, duly commissioned, in and for the county and state aforesaid, came N. LEE ARONFELD, president of NORWIN DEVELOPMENT CORPORATION, a corporation of the State of Kansas, personally known to me to be such officer, and to be the same person who executed as such officer the foregoing instrument of writing in behalf of said corporation, and he duly acknowledged the execution of the same for himself and for said corporation for the uses and purposes therein set forth.



IN WITNESS WHEREOF, I have hereunto set my hand and official seal on the day and year last above written.

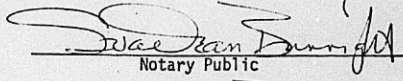
Cecilia M. Blackwell  
Notary Public

My Commission Expires:  
April 24, 1978

STATE OF KANSAS )  
SEDGWICK COUNTY ) ss.

BE IT REMEMBERED that on this 5th day of July, 1974, before me, the undersigned, a Notary Public, duly commissioned, in and for the county and state aforesaid, came JAMES E. Atherton of COMMERCE INVESTMENT COMPANY OF WICHITA, INC., a corporation of the State of Kansas, personally known to me to be such officer, and to be the same person who executed as such officer the foregoing instrument of writing in behalf of said corporation, and he duly acknowledged the execution of the same for himself and for said corporation for the uses and purposes therein set forth.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal on the day and year last above written.

  
Notary Public

*Eva Jean Turant*

My Commission Expires:

1.1976





Continental Pipe Line Company  
P.O. Box 1267  
Ponca City, Oklahoma 74601  
(405) 762-3456

February 20, 1974

Mr. N. Lee Aronfeld, President  
Leisure Living, Inc.  
5900 East Central  
Wichita, Kansas 67208

Dear Lee:

This letter is being written in response to your proposed future development (estimated one (1) year) and construction of housing units on the 20 acres directly to the west of Leisure Living's First Addition as shown by the attached map.

Leisure Living, Inc. is hereby advised that Continental Pipe Line Company is in general agreement to your development of the aforementioned property for this use.

Our general consent, of course, is totally contingent upon Leisure Living, Inc.'s willingness to enter into a similar type detailed agreement as previously negotiated for the Leisure Living, Inc. First Addition Project, whereby Leisure Living, Inc. agrees to pay for the entire cost of the pipe line project pursuant to the protection, welfare and safety of the general public and future company operations.

A handwritten signature in dark ink, appearing to read "G. A. Smith".

G. A. Smith  
Superintendent  
OK Northern District

rr

cc: Jerry Sellers, OK District Office

Attachment





**CONTINENTAL  
PIPE LINE COMPANY**

P.O. Box 1267  
Ponca City, OK 74603  
(405) 767-2367

Don V. Miller  
Director of Access and  
Regulations  
Oklahoma-Kansas District

October 9, 1985

**RECEIVED**

OCT 11 1985

METROPOLITAN PLANNING  
ROUTE  \_\_\_\_\_  
 \_\_\_\_\_

Mr. Duane Wadley  
Wadley Co.'s  
2613 East Harry  
Wichita, Kansas 67211

Dear Mr. Wadley:

Leisure Living Ventures First Addition  
W/2 of SE/4 of SE/4 Section 7-T27S-R2E

As you are aware, Continental Pipe Line Company (CPL) owns and operates an 8-inch high pressure crude oil pipeline which lies on the east and north edge of your development. This line is operated in compliance with Federal Department of Transportation Regulations and occupies an easement 20 feet in width. This easement was granted November 21, 1974, and recorded in Sedgwick County Register of Deeds Office, Film 129, Page 987. The provisions of this agreement prevent the landowner from placing any obstructions, such as fences, buildings, trees, paved roads, parking lots, or utilities, over CPL's line or within CPL's easement. Any obstructions of this type which inhibit CPL's rights of ingress and egress or prevent CPL from performing maintenance, repairs or inspections are in violation of this agreement. Any utilities which cross CPL's pipeline must cross underneath and have at least 18 inches of clearance. For safety reasons, it is recommended that these utilities, especially power lines, be encased in concrete.

CPL's line currently has 48 inches of cover as required by D.O.T. Regulations. This cover must be maintained. Should your development plans require grading or earth removal over CPL's line, the line will have to be lowered. This lowering will be done at your expense.

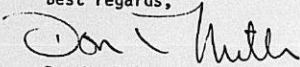
It is essential that CPL's easement remains unobstructed for surveillance, maintenance and quick access in the event of an emergency. CPL's intentions are to protect these rights as strongly as necessary.

Mr. Duane Wadley  
October 9, 1985  
Page 2

If you need the line located, please call Dwaine Vernon at (316) 755-0241.  
He will schedule this with you.

If you have any questions, please call.

Best regards,



Don V. Miller  
Director of Access and  
Regulations

br284

cc: GGC JMH DEV

Ms. Louise Olivarez, Senior Planner ✓  
Metropolitan Area Planning Department  
City Hall - Tenth Floor  
455 North Main Street  
Wichita, Kansas 67202-1688

**THE CITY OF WICHITA**

**OFFICE OF** Fire Department

**DATE** April 9, 1974

**TO** Curtis L. Newby, Junior Planner

**FROM** R. R. McClintock, Deputy Chief - Operations

**SUBJECT** S/D 74-14 Final Plat of  
Leisure Living Ventures  
1st Addition

I have met with the representative of Leisure Living 1st Addition and it was agreed that an emergency access to this property would be provided at the southwest corner of the property, approximately 325' West of the main entrance on 13th North. This arrangement is satisfactory with the Wichita Fire Department and should satisfy condition "E" on the Staff Comment Sheet.

*R. R. McClintock*  
R. R. McClintock  
Deputy Chief  
Operations

RRM:ew





ENGINEERS - ARCHITECTS

VAN DOREN-HAZARD-STALLINGS-SCHNACKE

250 ROCKBOROUGH BUILDING, 260 NORTH ROCK ROAD WICHITA, KANSAS 67218 - TEL. 316 686-7303

April 23, 1974

Re: Leisure Living Ventures  
First Addition  
Our Job No. 4-073-007-E0

Mr. William G. McKinley  
Assistant Traffic Engineer  
Wichita Traffic Engineering Div.  
City Building Annex  
104 South Main  
Wichita, Kansas 67202

Dear Mr. McKinley:

We are in receipt of your letter dated April 22, 1974, including your sketch of the details for Leisure Living Ventures First Addition proposed entrance and exit with 13th Street. The plan as outlined in your sketch is acceptable and will be incorporated into the construction plans for the project. Thank you for your assistance in this matter.

Very truly yours,

*John E. Lundblade*  
John E. Lundblade

cc: Metropolitan Area Planning Dept.  
City Building Annex

Leisure Living Inc.  
5920 East Central



ENGINEERS - ARCHITECTS

*Curt*  
**VAN DOREN-HAZARD-STALLINGS-SCHNACKE**

250 ROCKBOROUGH BUILDING, 260 NORTH ROCK ROAD WICHITA, KANSAS 67218 - TEL. 316 686-7303

April 10, 1974

Re: Leisure Living Ventures  
First Addition  
Our Job No. 400730007-E0

Chief R. R. McClintock  
Wichita Fire Dept.  
731 North Main  
Wichita, Kansas 67202

Dear Chief McClintock:

As discussed in our meeting April 9, 1974, we have revised the Final Plat of Leisure Living Ventures First Addition to reflect an extension of the Reserve Area along the west side of Lot 1 for a width of 15 feet. This opening will provide an additional emergency fire lane entrance from 13th Street into the project as you requested. A gate will be provided in the perimeter fence at this location to provide access to the property.

Very truly yours,

*John E. Lundblade*  
John E. Lundblade

cc: Wichita-Sedgwick County  
Metropolitan Area Planning Dept.





ENGINEERS - ARCHITECTS

**VAN DOREN-HAZARD-STALLINGS-SCHNACKE**

250 ROCKBOROUGH BUILDING, 260 NORTH ROCK ROAD WICHITA, KANSAS 67218 - TEL. 316 686-7303

April 10, 1974

Re: Leisure Living Ventures  
First Addition  
Our Job No. 4-073-007-E0

Mr. M. S. Mitchell  
Wichita-Sedgwick County  
Flood Control Office  
City Building Annex  
104 South Main  
Wichita, Kansas 67202

Dear Mr. Mitchell:

Submitted herewith, as instructed by the Subdivision Committee of the Metropolitan Area Planning Commission, is the revised lot grading plan of the above referenced project. I have reviewed the recommended changes with Max Greene of your office and have reflected the changes on the grading plan.

Very truly yours,

*John E. Lundblade*  
John E. Lundblade

cc: Wichita-Sedgwick County  
Metropolitan Area Planning Dept.

*newly water  
File*



ON SAFETY  
PHASE II

THE CITY OF WICHITA

OFFICE OF Ass't. Supt. of Public  
Works Maint.

DATE April 15, 1974

TO Jack Galbraith, Chief Planner, MAPD

FROM M. S. Mitchell

SUBJECT - Leisure Living Ventures First  
Addition SD 74-14

Reference is made to my request before the Subdivision Committee for a Lot Grading Plan for subject addition. Please be advised that on April 10, 1974 a revised Lot Grading Plan was submitted by John Lundblade which is satisfactory.

I trust this information is sufficient to permit final processing of the plat; however, if further information or discussion is desired, please advise.

A handwritten signature in dark ink, appearing to read "M. S. Mitchell".

M. S. Mitchell,  
Ass't. Superintendent of  
Public Works Maintenance

MSM/glm

cc: G. H. Wilton  
John Riddel, Central Insp  
John Lundblade  
Leisure Living Ventures First Addn. Plat File





ENGINEERS-ARCHITECTS

**VAN DOREN-HAZARD-STALLINGS-SCHNACKE**

250 ROCKBOROUGH BUILDING, 260 NORTH ROCK ROAD WICHITA, KANSAS 67218 - TEL. 316 686-7303

April 26, 1974

Re: Leisure Living Ventures  
First Addition  
Our Job No. 4-073-007-E0

Metropolitan Area Planning Dept.  
City Building Annex  
104 South Main  
Wichita, Kansas 67202

Gentlemen:

Please find enclosed the letter from Continental Pipe Line Company confirming arrangements for relocation of their pipe line across Leisure Living Ventures First Addition. This is to fulfill requirement Item I of the Subdivision Committee Final Plat report on the addition.

Very truly yours,

*John E. Lundblade*

John E. Lundblade

cc: Leisure Living Inc.



**LEISURE LIVING, INC.**

May 3, 1974

Wichita Sedgwick County  
Metropolitan Planning Department  
City Building Annex  
104 S. Main  
Wichita, Kansas 67202

RE: Leisure Living Ventures  
First Addition  
Continental Pipeline  
Relocation

Gentlemen:

This letter is to inform you that Leisure Living, Inc. will enter into an agreement with the Continental Pipe Line Company to pay the entire cost of relocating their pipe line which now crosses Leisure Living Ventures First Addition. An agreement similar to the one used for The Heritage will be employed. This is to fulfill requirement Item I of the Subdivision Committee Final Plat report on the addition.

Very truly yours,

LEISURE LIVING, INC.

*N. Lee Aronfeld*  
N. Lee Aronfeld  
President

CC: John Lundblade  
George Smith/Continental Pipe Line  
Ed Flanagan

NLA/rb



5800 EAST CENTRAL / WICHITA, KANSAS 67208 / (316) 685-1446

CERTIFICATE

City of Wichita)  
Sedgwick County) ss  
State of Kansas)

I, Leisure Living Ventures, owner and plat-  
tor of LEISURE LIVING VENTURES FIRST Addition, do hereby  
certify that petitions for the following improvements have been  
submitted to the Board of Commissioners of the City of Wichita,  
Kansas:

1. Water line extensions
2. Sanitary Sewer line extensions
3. Sidewalk improvements
- 4.
- 5.
- 6.
- 7.

As a result of the above-mentioned petitions for im-  
provements, lots within LEISURE LIVING VENTURES FIRST Addition  
may be subject to special assessments assessed thereto for the  
cost of constructing the above-described improvements.

Signed this 6th day of June, 1974.

N. Lee Aronfeld  
N. Lee Aronfeld President

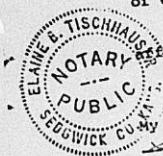
Robert T. High  
Sec. of Treasurer

City of Wichita)  
Sedgwick County) ss  
State of Kansas)

Be it remembered that on this 6th day of June,  
1974, before me, a notary public in and for said County and State,  
came N. Lee Aronfeld, to me personally  
known to be the same person who executed the fore-going instrument  
of writing and duly acknowledged the execution of same.

In Testimony Whereof, I have hereunto set my hand and  
affixed my notarial seal the day and year above written.

Elaine B. Tischhaus  
Notary Public



My Commission Expires:  
Sept 5, 1976

RECOMMENDATION FROM METROPOLITAN AREA PLANNING COMMISSION TO  
BOARD OF CITY COMMISSIONERSSUBDIVISION APPROVAL

S/D Number \_\_\_\_\_ Name \_\_\_\_\_  
 Application ~~74-11~~ Sketch Filed: LEISURE LIVING VENTURES FIRST ADD.  
 Preliminary Plat Filed: 1-21-74 Approved by S/D:  
 Final Plat Filed: 2-11-74 Approved by S/D:  
 Approved by Metropolitan ~~Area~~ Planning Commission: 2-21-74  
 4-4-74  
 4-11-74

DESCRIPTION

General Location: North side of 13th Street in an  
area west of Rock Road

Surveyor or Engineer:

Owner: VanDoren-Hazard-Stallings  
 Address: Leisure Living, Inc.  
 5920 East Central 67208

1. Gross Acreage of Plat	6. Access Control	
2. Number of Lots: 19.35	St. _____	No. Openings _____
Residential _____	St. 13th St. _____	No. Openings _____
Commercial 114	St. _____	No. Openings _____
Industrial _____	7. Req'd Improvements	
Other _____	St. Paving _____	Water _____
Total Number of Lots: _____	Sidewalk _____	Drainage X
3. Minimum Lot Area: 114 Acres	Sewer X	Other _____
4. Existing Zoning 0.1	X	
5. Special Problems Discussed		
	None	

Valid petitions have been submitted guaranteeing the installation of a sidewalk adjacent to 13th Street and the extension of sanitary sewer to serve subject property. Satisfactory arrangements have been made with the Water Department to serve subject property with water. A certificate has also been submitted certifying the petitions.

Planning Commission Recommendation:

That this plat be approved subject to:

- A. The applicant shall furnish an executed copy of the covenants, conditions and restrictions which contain provisions for the installation, improvement, and continued maintenance of private drives, parking areas and open space indicated on the plat.
- B. Recording of the plat within 30 days after approval by the Board of City Commissioners.  
 Gragert moved, Kamen seconded and it carried unanimously.  
 (Arnholz, Blakey, Gardenhire and Rising absent.)

NOTE: The associated zone Case Z-1595 from "AA" to "R-5" has been approved by the Board of City Commissioners on January 29, 1974 subject to replatting.

ACTION: Approve the petitions and instruct the Director of Law to prepare the necessary resolutions, instruct the City Clerk to file the certificate and declaration of covenants, conditions and restrictions with the Register of Deeds, the publication and filing costs of which shall be billed to the applicant, and approve the plat as approved by the Metropolitan Area Planning Commission and authorize the Mayor to sign.

April 12, 1974

Van Doren-Hazard-Stallings-Schnacke  
260 North Rock Road  
Wichita, Kansas 67206

Re: S/D 74-14 - Final Plat of  
LEISURE LIVING VENTURES  
FIRST ADDITION

Gentlemen:

At the regular meeting of the Metropolitan Area Planning Commission on April 11, 1974, the above-captioned plat was considered. The action of the Commission was to recommend that the plat be approved as recommended by the Subdivision Committee, subject to the conditions stated in our letter of April 5, 1974.

In addition to complying with those conditions, it is necessary that you meet the following requirements before this plat can be forwarded to the Board of City Commissioners for consideration.

1. Compliance with the requirements of the Metropolitan Area Planning Commission.
2. Submission of the fully completed and signed tracing of the subdivision to the Metropolitan Area Planning Department.

If you have any questions concerning this matter, please call our office.

Sincerely,

Jack H. Galbraith  
Chief Planner

JHG:ber  
cc: Leisure Living, Inc., 5920 East Central 67208  
R. R. McClintock, Wichita Fire Department  
Dean Sellers, Assistant City Engineer

April 5, 1974

Van Doren-Hazard-Stallings-Schnacke  
260 North Rock Road  
Wichita, Kansas 67206

Re: S/D 74-14 - Final Plat of  
LEISURE LIVING VENTURES  
FIRST ADDITION.

Gentlemen:

At the regular meeting of the Subdivision Committee of the Metropolitan Area Planning Commission April 4, 1974, the above captioned plat was considered. The action of the Committee was to recommend that this plat be approved, subject to:

- K.* Approval of the plat is subject to the approval of the necessary lot size and setback variances by the Board of Zoning Appeals.  
*for Bill McKinley called to say he has approved plans.*
- L.* The applicant shall contact the Traffic Engineering Department and the Engineering Division of the Department of Public Works relative to dimensions and geometrics for the entry drive on 13th Street North. A letter from said Departments approving the entrance design shall be furnished to the Planning Department.
- M.* The applicant shall be advised that this property is subject to future storm water sewer easements.
- N.* The applicant's engineer shall submit a revised lot grading plan with some minor adjustments to M. S. Mitchell of the Maintenance-Flood Control Office. A letter obtained from Mr. Mitchell approving said plan shall be submitted to the Planning Department.
- O.* The applicant shall contact Chief R. R. McClintock of the Wichita Fire Department relative to providing emergency access to subject property. A letter from Mr. McClintock stating that satisfactory arrangements have been made shall be submitted to the Planning Department.

LEISURE LIVING VENTURES FIRST ADDITION

April 5, 1974

Page 2

- Ben Sagan reports that water is being extended by district*
- OK* The applicant shall guarantee the extension of City water to serve subject property.
- OK* The applicant shall furnish an executed copy of the condominium bylaws, covenants, or Homes Association which contain provisions for the installation, improvement, and continued maintenance of all private drives, parking areas and open space indicated on the final plat.
- H.* The applicant shall be advised that none of the required 25-foot building setback from 13th Street can be utilized for off-street parking, and/or traffic circulation aisles except points of ingress and egress.
- OK* *still need letter from Leisure Living stating they are agreeable to enter into*  
The applicant shall make satisfactory arrangements with the ~~owner of~~ *Continental Oil Company* for the relocation of their pipe ~~all parts of~~ *line crossing subject property. A letter from said Company* ~~stating that such satisfactory arrangements have been made,~~ *letter from Continental Oil Company.* shall be submitted to the Planning Department.
- OK* *petitioned* The applicant shall install or guarantee the construction of a sidewalk adjacent to the north side of 13th Street North.
- K.* Recording of the plat within 30 days after approval by the Board of City Commissioners.

Enclosed with the applicant's copy of this letter is a list of the five methods which have been adopted as being acceptable for guaranteeing improvements required in the approval of plats. Forms for the bond and irrevocable letter of credit are available from this office.

The enclosed "marked" copy of the final plat is for your information and files.

This matter will be forwarded to the Planning Commission for its consideration on Thursday, April 11, 1974, at 1:30 p.m. If you should have any questions concerning this matter, please call.

Sincerely,

Curtis L. Newby  
Junior Planner

CLN:rme  
Enclosure

cc: Leisure Living, Inc., 5920 East Central, 67208  
R. R. McClintock, Wichita Fire Department  
Dean Sellers, Assistant City Engineer

March 25, 1974

Mr. John Lundblade  
Van Doren-Hazard-Stallings-Schnacke  
260 North Rock Road  
Wichita, Kansas 67206

Re: S/D 74-14 - Preliminary Plat  
of LEISURE LIVING VENTURES  
FIRST ADDITION.

Dear Mr. Lundblade:

At the regular meeting of the Subdivision Committee of the Metropolitan Area Planning Commission, March 21, 1974, the above captioned plat was considered. The action of the Committee was to defer this plat indefinitely. At such time as a revised final plat is submitted, this case will be rescheduled for consideration by the Committee.

If you should have any questions concerning this matter, please call.

Sincerely,

Curtis L. Newby  
Junior Planner

CLN:rme

cc: Leisure Living, Inc.  
5920 East Central, 67208

Dean Sellers, Assistant City Engineer

FINAL PLAT  
SUBDIVISION REPORT

SUBDIVISION COMMITTEE  
METROPOLITAN AREA  
PLANNING COMMISSION

S/D NO. 74-14 Name LEISURE LIVING VENTURES FIRST ADDITION  
Date Application Rec'd. 2-11-74 Preliminary Approval 2-21-74  
Scheduled S/D Meeting 3-21-74

DESCRIPTION

General Location On the north side of 13th Street North in an area west of Rock Road  
Owner Leisure Living, Inc.  
Surveyor/Engineer Van Doren-Hazard-Stallings-Schnacke  
Address 260 North Rock Road Phone 686-7303

- |                          |                      |  |                        |
|--------------------------|----------------------|--|------------------------|
| 1. Gross Acreage of Plat | <u>19.35</u>         | 7. Lineal Feet of New Streets:             |                        |
| 2. Number of Lots:       |                      | a. <u>        </u> R/W <u>        </u> ft. |                        |
| Residential              | <u>114</u>           | b. <u>        </u> R/W <u>        </u> ft. |                        |
| Commercial               | <u>        </u>      | c. <u>        </u> R/W <u>        </u> ft. |                        |
| Industrial               | <u>        </u>      | d. <u>        </u> R/W <u>        </u> ft. |                        |
| Other                    | <u>        </u>      | e. <u>        </u> R/W <u>        </u> ft. |                        |
| Total Number of Lots     | <u>114</u>           | TOTAL                                      | <u>None</u> ft.        |
| 3. Minimum Lot Frontage  | <u>45</u> ft.        | 8. Sidewalk adjacent to all streets?       | <u>yes</u> * <u>no</u> |
| 4. Minimum Lot Area      | <u>4,200</u> sq. ft. |  |                        |
| 5. Existing Zoning       | <u>AA</u>            |  |                        |
| 6. Proposed Zoning       | <u>R-5</u>           |  |                        |
- \*Walk to be constructed along north side of 13th St. North
9. Public Water Supply Yes (Yes-No), Name City of Wichita  
10. Public Sanitary Sewers Yes(Yes-No), Name City of Wichita  
11. Health Department Approval (where applicable) Yes (Yes-No)  
12. City of Wichita X : Three-Mile Area

STAFF COMMENTS:

- A. It shall be noted that utility easements as required on the preliminary plat differ from those shown on the final plat.
- B. The required additional right-of-way on 13th Street for an accel-decel lane has not been indicated on the final plat. The Traffic Engineering Division and the applicant should be prepared to discuss this matter.
- C. The applicant shall guarantee the extension of City water to serve subject property.
- D. The applicant shall furnish a copy of the Condominium bylaws, covenants, or Homes Association which contain provisions for the installation, improvement, and continued maintenance of all private drives, parking areas and open space.
- E. The applicant shall contact R. R. McClintock of the Wichita Fire Department relative to providing adequate fire protection for subject property.
- F. The applicant shall be advised that none of the required 25 foot building setback from 13th Street can be utilized for off-street parking, and/or traffic circulation isles except points of ingress and egress.
- G. The applicant shall make satisfactory arrangements with the Continental Oil Company for the relocation of their pipeline crossing subject property. A letter from said Company stating that such satisfactory arrangements have been made, shall be submitted to the Planning Department.
- H. The applicant shall install or guarantee the construction of a sidewalk adjacent to the north side of 13th Street North.
- I. The applicant shall be advised that the sidewalk construction will be required at the time of final building inspection when the sidewalk has been required as a condition of plat approval.

- J. The applicant's engineer shall submit a lot grading plan to M. S. Mitchell of the Maintenance-Flood Control Office. A letter obtained from Mr. Mitchell approving said plan shall be submitted to the Planning Department.
- K. Recording of the plat within 30 days after approval by the Board of City Commissioners.

NOTE: Major questions have been raised concerning this plat. Apparently it is intended to develop detached single family homes on subject property. Specific questions have been raised concerning the required front, side and rear yards required on each lot in the "R-5" district; the fact that the lot size does not meet the minimum 6,000 sq. ft. requirement for single family homes; and the proposed use of the indicated "use easements". Other questions raised concern the purpose for deadending private streets at the north, east and west property lines rather than terminating them several feet from the property lines; and whether or not there is adequate areas for interior movements of vehicles including fire equipment.



ENGINEERS - ARCHITECTS

**VAN DOREN-HAZARD-STALLINGS-SCHNACKE**

250 ROCKBOROUGH BUILDING, 260 NORTH ROCK ROAD WICHITA, KANSAS 67218 - TEL. 316 686-7303

March 11, 1974

Re: Leisure Living Ventures  
First Addition-Final Plat  
Our Job No. 4-073-007-EO

Wichita-Sedgwick County  
Metropolitan Area Planning Dept.  
City Building Annex  
104 South Main  
Wichita, Kansas 67202

Gentlemen:

Submitted herewith for your review are 29 prints of the final plat for  
LEISURE LIVING VENTURES FIRST ADDITION.

Very truly yours,

*John E. Lundblade*

John E. Lundblade

KAHRS, NELSON, FANNING, HITE & KELLOGG  
ATTORNEYS AT LAW

AUSTIN M. COWAN (1885-1949)  
W. A. KAHRS  
ROBERT H. NELSON  
H. W. FANNING  
RICHARD C. HITE  
DARRELL D. KELLOGG  
RICHARD L. HONEYMAN  
LARRY A. WITHERS  
GARY A. WINFREY  
CLARK R. NELSON

SUITE 830 - 200 WEST DOUGLAS AVENUE  
WICHITA, KANSAS 67202

AREA 316  
262-3777

February 27, 1974

Mr. Curtis L. Newby  
Metropolitan Area Planning Commission  
City Building Annex  
104 South Main Street  
Wichita, Kansas 67202

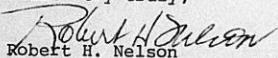
Dear Mr. Newby:

Re: S/D 74-14 - Preliminary Plat  
Leisure Living Ventures First Addition

Enclosed herewith is my title opinion as to the property involved in the above plat, which is based on a policy of title insurance which was issued on December 4, 1973.

This should suffice for your comments under letter dated February 25, 1974 with reference to title opinion and taxes.

Yours very truly,

  
Robert H. Nelson  
of KAHRS, NELSON, FANNING, HITE & KELLOGG

RHN:t  
Encs.

cc: Mr. N. Lee Aronfeld  
Mr. John Lundblade



KAHRS, NELSON, FANNING, HITE & KELLOGG  
ATTORNEYS AT LAW

AUSTIN M. COWAN (1885-1948)  
W. A. KAHRS  
ROBERT H. NELSON  
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SUITE 830 - 200 WEST DOUGLAS AVENUE  
WICHITA, KANSAS 67202

AREA 316  
262-3777

February 27, 1974

Metropolitan Area Planning Commission  
City Building Annex  
104 South Main Street  
Wichita, Kansas 67202

Gentlemen:

Re: Lot 2, Block 1, Coleman School Addition  
(Part of property being S/D 74-14 Pre-  
liminary Plat - Leisure Living Ventures  
First Addition)

OK You are advised that title to the above described property is in  
Leisure Living, Inc. by virtue of a deed which was conveyed by  
the Board of Education of Sedgwick County, Kansas to Leisure  
Living, Inc. dated November 29, 1973 and filed of record on Decem-  
ber 3, 1973, in Book 83, pages 406 and 407 in the Office of the  
Register of Deeds, Sedgwick County, Kansas.

Said conveyance, however, is subject to a mortgage in favor of  
The Commerce Savings and Loan Association, filed December 3, 1973,  
in Book 83, page 413 in the Office of the Register of Deeds, Sedg-  
wick County, Kansas.

The taxes for the year 1974 and prior years have been paid.

OK I am giving you this opinion based on title insurance policy  
number N 31784, which was issued to Leisure Living, Inc. on Decem-  
ber 4, 1973.

Yours very truly,

*Robert H. Nelson*  
Robert H. Nelson  
of KAHRS, NELSON, FANNING, HITE & KELLOGG

RHN:t



March 4, 1974

Mr. Ed Flanagan  
Leisure Living, Inc.  
5900 East Central  
Wichita, Kansas 67208

Subject: S/D 74-14 - Leisure  
Living Ventures First Addition.

Dear Mr. Flanagan:

I have forwarded your letter of March 1, 1974 to Paul Graves and Bill McKinley, and have asked that they review the submitted information and advise us whether or not this changes their position in recommending an accel-decel lane for subject plat.

We appreciate your providing this information.

Sincerely,

Jack H. Galbraith  
Chief Planner

JHG:rme

March 4, 1974

Paul Graves, Traffic Engineer

Jack H. Galbraith, Chief Planner

S/D 74-14 - Leisure Living Ventures First Addition

Attached are letters sent to the Planning Commission by Ed Flanagan of Leisure Living, Inc. This material is submitted to substantiate their argument against requiring an accel-decel lane on the above captioned plat.

Would you please review this material and give us your comments concerning whether or not this changes your position.

JHG:rme  
Attachment

cc: Bill McKinley, Assistant Traffic Engineer

LEISURE LIVING, INC.

1999 EAST COLUMBIA / WICHITA, KANSAS 67202 / (316) 862-1466

March 1, 1974

Metropolitan Area Planning Commission  
104 South Main Street  
Wichita, Kansas 67202

Re: S/D 74-14  
Leisure Living Ventures First Addition



Gentlemen:

In response to the action of the MAPC in its 2/21/74 meeting, Mr. Van Dornblade of Van Doren-Hazzard-Stallings and I met with Mr. Graves and Mr. McKinley last Friday to review the requirements for acceleration-deceleration lanes fronting our proposed development.

At that time we expressed our desire to investigate this situation further, and immediately contacted our land planners and engineers for their calculations and advice. Attached please find their comments.

Mr. Ralph Harris, A.D.P., is a partner in the firm of Miller-Hickman Associates and heads up their planning activities. This firm is probably the foremost residential land planners in the country, and has been responsible for the design of many outstanding P.U.'s and residential developments.

Mr. William L. Smith of Van Doren-Hazzard-Stallings is primarily involved in traffic planning for his firm and holds a Master's Degree in Transportation Planning from Kansas State University. (I understand that Mr. Smith and his work are already known to Mr. Graves and Mr. McKinley.)

It is their careful conclusion, based on a thorough review of calculations by calculations, that acceleration-deceleration provisions are unnecessary now or in the foreseeable future. It is our opinion that they are not undesirable in that their construction at this time would require disturbing the majority of the many trees that the property owners are relying on that the open spaces now planned within the development would be those which would lessen the quality of the living environment.

Further more that we would like to bring forth for your consideration is that this requirement is inconsistent with MAPC requirements for all other


To: MAPC, March 1, 1974

residential development of this size. For example, The Horizons, now under construction on Rock Road, is serviced by a single 25' curb cut without these extra lanes. This project consists of 250-300 dwelling units. Furthermore, our development of 114 single family homes will not generate as much traffic than most of the area streets where acceleration-deceleration are not usually required. We request that these same standards be applied.

In that the final plat application must be filed early next week, we respectfully request your immediate decision on this matter.

Sincerely,

LEISURE LIVING, INC.

  
Ed Flanagan  
Director of Construction

EF/k

cc: Mr. Robert Lakin, MAPC

Walter Richardson Associates Architecture/Planning

Walter J. Richardson, AIA

Huba S. Nagy, AIA

Ralph J. Martin, AIP

February 25, 1974

Mr. Robert Lakin  
Metropolitan Area Planning Commission  
Wichita, Kansas

Dear Mr. Lakin:

Leisure Living Ventures 1st Addition  
Coleman Property

This letter pertains to the Leisure Living Ventures 1st Addition proposed development on the 20 acre Coleman School property immediately west of the Heritage townhouse condominium project.

We have developed the land plan and are now involved in the detailed architectural design for the project and would like to set forth some of the factors which are involved in determining the adequacy of the traffic geometric design at the intersection of the project's entry road and 13th Street.

We understand that there is some concern about the necessity for acceleration and deceleration lanes in conjunction with the intersection. Normally a development of this type would not require such design since the determination as to its necessity is primarily a function of the peak hour traffic generation and the number of movements that can be expected to exert some conflict with the traffic flow on the arterial street. Our studies indicate that this should not be a problem for this reason. The 114 proposed dwelling units can be expected to generate between .6 and .8 peak hour trips per dwelling unit averaging them at .7. This would imply that approximately 80 trips could be expected to enter the intersection during the peak hour. In turn, this would mean approximately one car every 45 seconds during the peak hour. This statistic is far below any expected traffic engineering statistic which would require the condition of acceleration and deceleration in connection with the arterial project entry intersection.

230 East 17th Street Suite 200 Costa Mesa, California 92627 714/642-8095

Mr. Robert Lakin  
February 25, 1974  
Page 2

We would normally expect to design such lanes in connection with a project which generates upwards of 300 to 400 peak hour movements and this only in the instance when the arterial highway in question would be accommodating a relatively high volume of high speed traffic with respect to the specific Leisure Living Ventures 1st Addition project. This is not the case, especially since there is a four way controlled inter-section approximately 700 to 800 feet easterly of the proposed project entry. This in itself will tend to reduce and space out the potentially conflicting traffic to a more than acceptable level for the mixture intended.

Very truly yours,

*Ralph J. Martin*  
Ralph J. Martin

RJM/so

cc: Mr. Ed Flanagan  
Leisure Living, Inc.



ENGINEERS-ARCHITECTS

**VAN DOREN-HAZARD-STALLINGS-SCHNACKE**

250 ROCKBOROUGH BUILDING, 260 NORTH ROCK ROAD WICHITA, KANSAS 67206 TEL. 316 686-7303

February 28, 1974

Re: Leisure Living Ventures  
First Addition-Traffic Review  
Our Job No. 4-73-07-E0

Mr. John Lundblade  
Van Doren-Hazard-Stallings  
Rockborough Building  
260 N. Rock Road  
Wichita, Kansas 67206

Dear John:

We have reviewed the traffic flow at the intersection of the access facility for the referenced addition and 13th Street. It would appear based on our analysis of gaps and gap acceptance that lanes for right turn operations will not have an appreciable beneficial impact on capacity or traffic flow at this intersection.

Our gap analysis was based on 1985 traffic along 13th Street and peak hour generation of one auto trip per dwelling unit from the referenced addition. The results of this analysis indicated that during the morning peak hour 70% to 80% of the turning vehicles will find an acceptable gap without waiting. An acceptable gap was established as more than six (6) seconds or 350 feet.

The p.m. peak volumes west bound on 13th Street and the right turn volumes into the addition do not appear to be the critical points of concern. The p.m. peak west bound (340 vph) on 13th Street could easily be handled in one lane at level of service A.

Operations during non-peak periods do not appear to represent special problems not already analyzed during peak periods. Therefore, operations during these periods would not require separate lanes for right turn movements.

Very truly yours,

VAN DOREN-HAZARD-STALLINGS

By: 

William L. Smith

WLS:my  
Enclosure

DATA SHEET

Facility:

13th Street - basic four (4) lanes  
Access Drive - divided four (4) lanes at intersection (10 ft. lanes)

Volumes:

13th Street - 6830 ADT 1985  
Access Drive - 114 vph (peak hour volume) (1 vehicle trip/dwelling unit)  
Peak Hour Splits (morning peak)  
13th Street west bound 680  
13th Street east bound 340  
Access facility - left turns 38 (40 vph was used)  
Access facility - right turns 76 (80 vph was used)  
West bound lane split 50-50 (340 vphpl)

Critical Gap:

Critical gap - 6 sec. @ 40 mph = 352.8 ft. (use 350 ft.)

Analysis:

Find probability of gap greater than 6 sec. or 350 ft.

Found from graphs in Traffic Flow Theory and Control by D.R. Drew, pp.161  
density (K) in vehicles per mile (vpm)

$$K = 340 \text{ vph} / 40 \text{ mph} = 8.5 \text{ vpm}$$

from graph P(gap 350') 70-80%

KAHRS, NELSON, FANNING, HITE & KELLOGG  
ATTORNEYS AT LAW  
SUITE 630 - 200 WEST DOUGLAS AVENUE  
WICHITA, KANSAS 67202

AUSTIN M. COWAN (1889-1940)  
W. A. KAHRS  
ROBERT H. NELSON  
H. W. FANNING  
RICHARD C. HITE  
DARRELL D. KELLOGG  
RICHARD L. HONEYMAN  
LARRY A. WITHERS  
GARY A. WINFREY  
CLARK R. NELSON

AREA 316  
262-3777

March 1, 1974

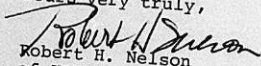
Mr. Curtis L. Newby  
Metropolitan Area Planning Commission  
City Building Annex  
104 South Main Street  
Wichita, Kansas 67202

Dear Mr. Newby:

Re: S/D 74-14 - Preliminary Plat  
Leisure Living Ventures First Addition

I am enclosing herewith original Sidewalk Petition which has been signed by Leisure Living, Inc. for construction of a sidewalk on the North side of 13th Street adjacent to said property. Please give this to Mr. Tandy in your engineering office.

Yours very truly,

  
Robert H. Nelson  
of KAHRS, NELSON, FANNING, HITE & KELLOGG

RHN:t

Enc.

cc: Mr. N. Lee Aronfeld



February 25, 1974

Van Doren-Hazard-Stallings-Schnacke  
c/o John Lundblade  
260 North Rock Road  
Wichita, Kansas 67206

Re: S/D 74-14 - Preliminary Plat  
of LEISURE LIVING VENTURES  
FIRST ADDITION.

Dear Mr. Lundblade:

At the regular meeting of the Subdivision Committee of the Metropolitan Area Planning Commission, February 21, 1974, the above captioned plat was considered. The action of the Committee was to approve the preliminary and authorize preparation of the final plat, subject to the following:

- A. Additional utility easements as indicated on the engineer's "marked" copy of the preliminary plat shall be indicated on the final plat.
- B. The applicant shall contact Bill McKinley of the Traffic Engineering Department relative to indicating a 10 foot accel-decel lane on 13th Street.
- C. The applicant shall guarantee the extension of City water to serve subject property.
- D. The applicant shall contact R. R. McClintock of the Wichita Fire Department relative to providing adequate fire protection for subject property.
- E. The angle indicated on the northwest corner of subject plat shall be appropriately corrected.
- F. The applicant's engineer shall submit a lot grading plan to M. S. Mitchell of the Maintenance-Flood Control Office. A letter obtained from Mr. Mitchell approving said plan shall be submitted to the Planning Department.

Preliminary Plat of LEISURE LIVING  
VENTURES FIRST ADDITION  
February 25, 1974  
Page 2

- G. The applicant shall furnish a copy of the Condominium bylaws, covenants, or Homes Association which contain provisions for the installation, improvement, and continued maintenance of all private drives, parking areas and open space.
- H. That portion of subject property not being platted as building lots, shall be clearly labeled as a "Reserve" on the final plat and the language within the plat text indicating the uses for the Reserve shall include but not necessarily be limited to the following: firelanes, utility easements, private drives, parking, recreation.
- I. The applicant shall be advised that none of the required 25 foot building setback can be utilized for off-street parking, and/or traffic circulation isles.
- J. The applicant shall make satisfactory arrangements with the Continental Oil Company for the relocation of their pipeline crossing subject property. A letter from said Company stating that such satisfactory arrangements have been made, shall be submitted to the Planning Department.
- K. The applicant shall install or guarantee the construction of a sidewalk adjacent to the north side of 13th Street North; the total estimated construction cost to be in the amount of \$1,982.
- L. The applicant shall install or guarantee the installation of all utilities and facilities which are applicable and described in Article 8 of the MAPC Subdivision Regulations.
- M. Requirements for a final plat (see pages 20-25, Part 4, Article 5 of the MAPC Subdivision Regulations).

Enclosed herewith is the "marked" copy of the preliminary plat for your information and files.

If you should have any questions concerning this matter, please call.

Sincerely,

Curtis L. Newby  
Junior Planner

CLN:rme

cc: Leisure Living, Inc., 5920 East Central, 67208  
Dean Sellers, Assistant City Engineer

PRELIMINARY PLAT  
SUBDIVISION REPORT

SUBDIVISION COMMITTEE  
METROPOLITAN AREA  
PLANNING COMMISSION

S/D NO. 74-14 Name LEISURE LIVING VENTURES FIRST ADDITION  
Date Application Rec'd. 2-11-74 Preliminary Approval \_\_\_\_\_  
Scheduled S/D Meeting 2-21-74

DESCRIPTION

General Location On the north side of 13th St. North in an area  
west of Rock Road  
Owner Leisure Living, Inc.  
Surveyor/Engineer Van Doren-Hazard-Stallings-Schnacke  
Address 260 North Rock Road Phone 686-7303

- |   |                                 |
|---|---------------------------------|
| 1. Gross Acreage of Plat <u>19.35</u>                                       | 7. Lineal Feet of New Streets:  |
| 2. Number of Lots:  | a. _____ R/W _____ ft.          |
| Residential <u>114</u>  | b. _____ R/W _____ ft.          |
| Commercial _____  | c. _____ R/W _____ ft.          |
| Industrial _____  | d. _____ R/W _____ ft.          |
| Other _____   | e. _____ R/W _____ ft.          |
| Total Number of Lots <u>114</u>   | TOTAL _____ None _____ ft.      |
| 3. Minimum Lot Frontage <u>45</u> ft.                                       | 8. Sidewalk adjacent to all     |
| 4. Minimum Lot Area <u>4,200</u> sq. ft.                                    | streets? <u>yes</u> * <u>no</u> |
| 5. Existing Zoning <u>AA</u>  |                                 |
| 6. Proposed Zoning <u>R-5</u>   | *Walk to be constructed along   |
|   | north side of 13th St. North    |
| 9. Public Water Supply <u>Yes</u> (Yes-No), Name <u>City of Wichita</u>     |                                 |
| 10. Public Sanitary Sewers <u>Yes</u> (Yes-No), Name <u>City of Wichita</u> |                                 |
| 11. Health Department Approval (where applicable) <u>Yes</u> (Yes-No)       |                                 |
| 12. City of Wichita <u>X</u> : Three-Mile Area _____                        |                                 |

STAFF COMMENTS:

- A. Associated zone case Z-1595, "AA" to "R-5" has been approved subject to platting.
- B. That portion of subject property not being platted as building lots, shall be clearly labeled as a "Reserve" on the final plat and the language within the plat text indicating the uses for the Reserve shall include but not necessarily be limited to the following: Fire-lanes, utility easements, private drives, parking, recreation.
- C. The applicant shall be advised that none of the required 25 foot building setback can be utilized for off-street parking, and/or traffic circulation isles.
- D. The applicant shall make satisfactory arrangements with the Continental Oil Company for the relocation of their pipeline crossing subject property. A letter from said Company stating that such satisfactory arrangements have been made, shall be submitted to the Planning Department.
- E. The applicant shall install or guarantee the construction of a sidewalk adjacent to the north side of 13th Street North; the total estimated construction cost to be in the amount of \$1,982.
- F. The applicant shall install or guarantee the installation of all utilities and facilities which are applicable and described in Article 8 of the MAPC Subdivision Regulations.
- G. Requirements for a final plat (see pages 20-25, Part 4, Article 5 of the MAPC Subdivision Regulations).



ENGINEERS - ARCHITECTS

**VAN DOREN-HAZARD-STALLINGS-SCHNACKE**

250 ROCKBOROUGH BUILDING, 260 NORTH ROCK ROAD WICHITA, KANSAS 67218 - TEL. 316 686-7303

February 11, 1974

Re: Leisure Living Ventures  
First Addition  
Preliminary Plat  
Our Job No. 4-073-007-E0

Wichita-Sedgwick County  
Metropolitan Area Planning Dept.  
City Building Annex  
104 South Main  
Wichita, Kansas 67202

Gentlemen:

Submitted herewith for your review are 29 prints of the preliminary plat for LEISURE LIVING VENTURES FIRST ADDITION. Accompanying this submittal is a check for \$389.00 to cover the application fees of \$50.00 plus \$3.00 for each of the 113 lots over one.

Very truly yours,

*John E. Lundblade*

John E. Lundblade



ENGINEERS-ARCHITECTS

VAN DOREN-HAZARD-STALLINGS-SCHNACKE

250 ROCKBOROUGH BUILDING, 260 NORTH ROCK ROAD WICHITA, KANSAS 67218 - TEL. 316 686-7303

Jan. 21, 1974

Re: Leisure Living Ventures  
First Addition  
Our Job No. 4-073-007-E0

Subdivision Committee  
Wichita-Sedgwick County  
Metropolitan Area Planning Dept.  
City Building Annex  
104 South Main St.  
Wichita, Kansas 67202

Gentlemen;

Submitted herewith for your review are five (5) copies of the Sketch Plat for Leisure Living Ventures First Addition along with the Application for Subdivision Approval form.

Very truly yours,

*John E. Lundblade*

John E. Lundblade

*2-8-74 gave verbal ok of prelim plat  
submission by engineer subject to:*

- 1) indicate access contacts to 13<sup>th</sup> St and 2 openings*
- 2) Sidewalk guarantee on 13<sup>th</sup> St.*
- 3) Satisfactory arrangements to relocate gas pipeline*
- 4) Req. for prelim plat.*
- 5) Indicate 25' bldg setback from 13<sup>th</sup> on plat.*

Map No.: 5749  
Section No.: 7  
Twp. No.: T27S  
Range: R2E

S/D No. \_\_\_\_\_

APPLICATION FOR SUBDIVISION APPROVAL

Name of Subdivision: LEISURE LIVING VENTURES FIRST ADDITION

General Location: Approx. 660 ft. West of 13th St. North and Rock Rd. on North side of 13th St. North

Name of Property Owner: Leisure Living, Inc.  
Address: 5920 East Central 67208 Phone: 685-1446  
Name of Subdivider: Van Doren-Hazard-Stallings  
Address: 260 North Rock Rd. 67206 Phone: 686-7303  
Name of Agent/Surveyor: Van Doren-Hazard-Stallings  
Address: 260 North Rock Rd. 67206 Phone: 686-7303  
Date of Application: Jan. 21, 1974

SUBDIVISION INFORMATION:

1. Gross Acreage of Plat 19.35 Ac.
2. Number of Lots:  
Residential 114  
Commercial \_\_\_\_\_  
Industrial \_\_\_\_\_  
Other \_\_\_\_\_  
Total Number of Lots 114
3. Minimum Lot Frontage 45 ft.
4. Minimum Lot Area 4,200 ft.
5. Existing Zoning AA
6. Proposed Zoning R-5
7. Lineal Feet of New Streets:  
a. None R/W None ft.  
b. \_\_\_\_\_ R/W \_\_\_\_\_ ft.  
c. \_\_\_\_\_ R/W \_\_\_\_\_ ft.  
d. \_\_\_\_\_ R/W \_\_\_\_\_ ft.  
e. \_\_\_\_\_ R/W \_\_\_\_\_ ft.  
TOTAL \_\_\_\_\_ ft.
8. Sidewalk adjacent to all streets? XXXX \* no  
\* Walk to be constructed along North side of 13th St. North
9. Public Water Supply (Yes-XXX), Name City of Wichita
10. Public Sanitary Sewers (Yes-XXXX), Name City of Wichita
11. Health Department Approval (where applicable) \_\_\_\_\_ (Yes-~~XX~~)
12. City of Wichita Three-Mile Area

The owner herein agrees to comply with the Subdivision Regulations for the Wichita-Sedgwick County Metropolitan Area, as approved, and all other pertinent ordinances of the City of Wichita and/or Resolutions of Sedgwick County, Kansas, and Statutes of the State of Kansas. He further agrees that he waives the 60-day statutory period in which the Planning Commission or governing body must act. In addition, it is agreed that all costs of recording the plat and supplemental documents thereto with the Register of Deeds, as well as all costs of publication of initiating resolutions approving any petition for improvements, such as streets, sewer, sidewalks, etc. shall be assumed and paid by the owner when billed. The undersigned further states that he is the owner of the property proposed for platting.

Owner's Signature: N. Lee Aronfeld - President, President  
N. Lee Aronfeld  
for Leisure Living Ventures  
LEISURE LIVING INC.

Wichita-Sedgwick County Metropolitan Area  
Planning Commission, Room 402, City Building  
Annex, 104 South Main Street, Wichita, Kansas

Received by Charles L. Peak  
Date 1-27-74  
Fec Submitted none

FORM 273-021

**PAYMENT NOTICE**

City of Wichita

**PAY AT TREASURER'S OFFICE - FIRST FLOOR**

Bldg & Elev.	Elec.	Elev. Insp.	Exam. Fees
Hse. Mvr.	Hse. Moving	Licse.	Mech.
Oil Well	Pav. Cuts	Plan.	Plbg. Cert.
Sanitation	Sewer	Signs	Sidewalk
Street	Trailer		

11380

DESCRIPTION	AMOUNT

Name

Address

Type

Due Date

Comments:

Date

BY

2/1/14

[Signature]

**The Heritage**  
Legal Documents



**Table of Contents**

Agreement for Purchase... Brown Section  
Declaration of Covenants, Conditions and Restrictions... Gray Section  
Articles of Incorporation... Pink Section  
Bylaws... Gold Section  
Plot, Plat and Floor Plans, Specifications... White Section  
Rules and Regulations... Blue Section  
Management Agreement... Ivory Section  
Warranty Deed... White Section  
Warranty Deed—Joint Tenancy... White Section



AGREEMENT FOR PURCHASE/The Heritage

Leisure Living, Inc., "LEISURE," a Kansas Corporation, hereby agrees to sell and convey to "BUYER", (whether one or more who agrees to purchase from LEISURE a residence site in THE HERITAGE, a condominium development, with a \_\_\_\_\_ type residence constructed or to be constructed thereon in accordance with the plans and specifications attached hereto, by LEISURE, on the following-described real property, to-wit:

Lot \_\_\_\_\_, Leisure Living First Addition, Wichita, Sedgwick County, Kansas.

BUYER agrees to pay LEISURE \_\_\_\_\_ as an earnest money deposit, upon the execution hereof, and the sum of \$ \_\_\_\_\_ upon Closing, in accordance with the following terms and conditions:

INITIAL WHICHEVER OF 1(a), 1(b), or 1(c) FOLLOWING IS APPLICABLE:

- 1. (a) IF LIKE UNIT HAS NOT BEEN BUILT: BUYER LEISURE

BUYER has ten (10) days to cancel this agreement after receiving written notice from LEISURE that a like unit, now under construction, has been built and is available for inspection. BUYER's failure to then make a written cancellation to LEISURE within said ten (10) days shall bind BUYER to conclude the purchase of the subject property. Upon receipt of BUYER's cancellation, LEISURE shall return BUYER's earnest money deposit.

- (b) IF LIKE UNIT IS BUILT: BUYER LEISURE

BUYER has thoroughly inspected and approved a \_\_\_\_\_ type residence unit of like construction as built by LEISURE in the development and agrees to purchase the subject unit.

- (c) IF SUBJECT UNIT IS BUILT: BUYER LEISURE

BUYER agrees to purchase and LEISURE agrees to sell the subject residential unit, already inspected by BUYER and completed to his satisfaction.

- 2. If 1(a) and 1(b) above are applicable the following applies: (a) Construction of subject unit shall commence on or about the \_\_\_\_\_ day of \_\_\_\_\_, 197\_\_\_\_ and shall be completed by the \_\_\_\_\_ day of \_\_\_\_\_, 197\_\_\_\_ unless delayed by reason of strikes, weather, accidents, acts of God, or other reasonable causes, in which event the commencement and/or completion shall be extended accordingly. (b) LEISURE may substitute materials other than those set forth in the attached plans and specifications, provided said substituted materials are of equal or higher cost. (c) LEISURE shall maintain during construction of subject unit, a builder's risk policy on the subject unit, insuring the parties as their interest may appear from perils caused by fire, lightning, and extended coverage endorsements. (d) LEISURE's obligation to perform shall be subject to its ability to secure financing, satisfactory to LEISURE, to construct said subject unit residence.

- 3. Any deviations or additions in construction and the cost therefor shall be agreed upon in writing and attached hereto and made a part hereof.

- 4. The closing of said purchase shall be within \_\_\_\_\_ days from the date of: (cross out one following not applicable) the subject unit's completion/the date hereof.

- 5. Within a reasonable time prior to closing, LEISURE shall provide BUYER a title commitment from a reputable title company showing title to be vested in LEISURE, subject to the Declaration of Covenants, Conditions and Restrictions covering The Heritage, By-Laws of The Heritage Homeowners Association, Inc., and all amendments thereto, and to all other easements and restrictions of record, and to the Plat and all supplemental Plats of Leisure Living First Addition and any other platted property and to any mortgage which LEISURE may have theretofore secured on said property.

- 6. BUYER acknowledges receipt of and signifies his understanding and approval of a copy of the following: Declaration, By-Laws, and all amendments, and also of the Rules and Regulations of The Heritage and of the Management between the Association and LEISURE and BUYER.

- 7. Prior to closing, the legal description of the property to be conveyed, to accord with the Declaration and to be inserted in the Deed to Buyer, shall be determined by survey or some other satisfactory means.

- 8. At closing, the balance of the purchase price shall be paid LEISURE and LEISURE shall deliver to BUYER possession of said residence and property and its Corporate Warranty Deed conveying fee simple title to same and the common areas and facilities appertaining thereto, free and clear of all liens and encumbrances save those items referred to in paragraph 5 above and to unmatured special assessments, but in all events, free of any mortgage lien which LEISURE may have theretofore created (unless assumed by BUYER).

- 9. All general and special taxes for the calendar year in which closing occurs shall be prorated between LEISURE and BUYER on the basis of the closing date. If the amount of any such tax to be prorated cannot then be ascertained, proration shall be based upon the estimated tax for such year, using the value of subject unit as assessed and the tax levy for the previous year.

- 10. At closing BUYER agrees to advance to The Heritage Homeowners Association, Inc., the sum of EIGHTY DOLLARS (\$80.00) for use as part of the original operating fund.

- 11. In the event the subject unit constructed or to be constructed on the above property are destroyed or damaged beyond repair by fire, wind storm, hail, explosion or otherwise, before this Agreement is consummated, BUYER may, at his option, terminate this Agreement, in which event the BUYER's earnest money deposit shall be returned to BUYER.

- 12. In the event BUYER fails or refuses to consummate this agreement in accordance with its terms, LEISURE shall have the right to retain the BUYER's earnest money deposit as liquidated damages for the breach of this Agreement.

- 13. BUYER may not assign this Agreement without the prior written consent of LEISURE. The provisions hereof are binding upon and shall inure to the benefit of the successors, assigns, heirs, devisees and personal representatives of the parties hereof. LEISURE LIVING, INC.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 197\_\_\_\_ By \_\_\_\_\_

BUYER \_\_\_\_\_ BUYER \_\_\_\_\_

ATTEST: \_\_\_\_\_

AGREEMENT FOR PURCHASE/The Heritage

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BUYER has thoroughly inspected and approved a \_\_\_\_\_ type residence unit of like construction as built by LEISURE in the development and agrees to purchase the subject unit.

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(a) Construction of subject unit shall commence on or about the \_\_\_\_\_ day of \_\_\_\_\_, 197\_\_\_\_ and shall be completed by the \_\_\_\_\_ day of \_\_\_\_\_, 197\_\_\_\_ unless delayed by reason of strikes, weather, accidents, acts of God, or other reasonable causes, in which event the commencement and/or completion shall be extended accordingly.

(b) LEISURE may substitute materials other than those set forth in the attached plans and specifications, provided said substituted materials are of equal or higher cost.

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LEISURE LIVING, INC.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 197\_\_\_\_. By \_\_\_\_\_

BUYER

BUYER

ATTEST: \_\_\_\_\_

AGREEMENT FOR PURCHASE/The Heritage

Leisure Living, Inc., "LEISURE," a Kansas Corporation, hereby agrees to sell and convey to "BUYER", (whether one or more who agrees to purchase from LEISURE a residence site in THE HERITAGE, a condominium development, with attached hereto, by LEISURE, on the following-described real property, to-wit:

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BUYER agrees to pay LEISURE \_\_\_\_\_ as an earnest money deposit, upon the execution hereof, and the sum of \$ \_\_\_\_\_ upon Closing, in accordance with the following terms and conditions:

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- (c) IF SUBJECT UNIT IS BUILT:

BUYER agrees to purchase and LEISURE agrees to sell the subject residential unit, already inspected by BUYER and completed to his satisfaction.

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- 13. BUYER may not assign this Agreement without the prior written consent of LEISURE.

The provisions hereof are binding upon and shall inure to the benefit of the successors, assigns, heirs, devisees and personal representatives of the parties hereof.

LEISURE LIVING, INC.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 197\_\_\_\_ By \_\_\_\_\_

BUYER

BUYER

ATTEST: \_\_\_\_\_

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
THE HERITAGE

---

KNOW ALL MEN BY THESE PRESENTS, that this Declaration, made on the date hereinafter set forth by LEISURE LIVING, INC., a Kansas corporation (hereinafter called the "Declarant");

WITNESSETH, THAT:

WHEREAS, Declarant is the owner of all those tracts and parcels of land known as "Leisure Living First Addition, Wichita, Sedgwick County, Kansas", according to the recorded plat thereof, and also described as:

The South 600 feet of the East Half of the Southeast Quarter of the Southeast Quarter (E/2 SE/4 SE/4) of Section 7, Township 27 South, Range 2 East of the 6th P.M., except the South 225 feet of the East 250 feet thereof;

and

WHEREAS, Exhibit "A" hereto attached is a reproduction of the final recorded plat of Leisure Living First Addition, Wichita, Sedgwick County, Kansas, supplemented however by lines of demarcation superimposed by Declarant showing said addition to contain three phases denominated "Phase I", "Phase II", and "Phase III";

WHEREAS, Declarant will convey the property described as Phase I in Exhibit "A" subject to the protective covenants, conditions, restrictions, reservations, liens and charges as hereinafter set forth; and

WHEREAS, Declarant retains the sole and exclusive right to later submit to the provisions of this Declaration the property described in Exhibit "A" as Phase II and Phase III, together with all improvements then constructed or to be constructed thereon.

NOW, THEREFORE, Declarant does hereby make, declare and publish its intention and desire to submit, and does hereby submit, the property described as Phase I in said Exhibit "A" to the condominium form of ownership as provided by Kansas law. Said Phase I property shall be held, sold and conveyed subject to the following covenants, conditions and restrictions, all of which are for the purpose of enhancing and protecting the value, desirability and attractiveness of the Phase I property. Such covenants, conditions and restrictions shall be binding on all parties having or acquiring any right, title or interest in the Phase I property or any part thereof and shall inure to the benefit of each owner thereof.

ARTICLE I

DEFINITIONS

Section 1. Act means the Apartment Ownership Act found in Kansas Statutes Annotated, in Chapter 58 at Article 31.

Section 2. Assessment means an owner's share of the common expenses which from time to time is assessed against an owner by the Association in the manner herein provided.

Section 3. Association means The Heritage Homeowner's Association, Inc., its successors and assigns, acting on behalf of the owners in accordance with the development documents for the purpose of administering The Heritage.

Section 4. Building means the composite of all adjoining residences comprising a single residential structure as shown on the master plot plan or supplemental plats.

Section 5. Building Number means the number, letter or combination thereof designating a building in the development documents, the master plot plan or supplemental plats.

Section 6. Common Areas and Facilities mean that portion of the property made subject to this Declaration and designated herein for the common use and enjoyment of the owners but shall not include any portion of the property now or hereafter made subject to this Declaration on which residences have been or shall be constructed pursuant to the terms of the development documents. The meaning of common areas and facilities also includes, but shall not be limited to, all yards, streets, driveways, parking areas, recreational facilities, community facilities, swimming pools, pumps, trees, landscaping, pavements, streets, pipes, wires, conduits and other public utility lines and other personal property owned by the owners as tenants in common which may be necessary or convenient to the existence, maintenance and safety of the development. All conduits, ducts, plumbing, wiring and other facilities for the furnishing of utility services which are contained within a residence are not part of the common areas and facilities.

Section 7. Common Expenses means (a) expenses of administration, maintenance, repairs and replacements of the common areas and facilities, (b) expenses determined by the Association to be common expenses and which are lawfully assessed against the owners by the Association, and (c) expenses declared to be common expenses by provisions of the act, this Declaration or the By-Laws of the Association.

Section 8. Declarant means Leisure Living, Inc., a Kansas corporation, its successors and assigns.

Section 9. Development means the entire undertaking pursuant to the development documents which shall commence with the filing of this Declaration for record in the Office of the Register of Deeds, Sedgwick County, Kansas, and shall continue thereafter until terminated as provided for herein. Attached hereto as Exhibit        and made a part hereof is a brochure denominated "The Heritage Elegant

Townhomes" showing a site plan of The Heritage for 65 residential units and recreational and common areas and facilities (Phases I, II and III), floor plans for the various types of residences and an outline of specifications, the contents of said brochure showing among other things:

- (a) description of each building within The Heritage;
- (b) number of stories and basements in each building;
- (c) number of residences in each building;
- (d) principal materials of which the residences are to be constructed;
- (e) residence number of each residence, a showing of its location, approximate area, number of rooms and immediate common area (if any) to which it has access;
- (f) description of common areas and facilities;
- (g) description of limited common areas, if any, stating to which residence(s) their use is reserved.

The description of the land on which the improvements are to be located is reflected in Exhibit "A" attached hereto. The Development shall also include any contiguous property and improvements thereon which is submitted to the terms of this Declaration.

Section 10. Development Documents means those documents by means of which The Heritage will be established as a condominium consisting of (a) this Declaration of Covenants, Conditions and Restrictions, (b) the By-Laws of the Association, and (c) the deeds by means of which Declarant will convey particular residences to the purchasers thereof.

Section 11. Majority or Majority of Owners means the owners with fifty-one percent (51%) or more of the votes in accordance with the percentages assigned in this Declaration for voting purposes.

Section 12. Owner means the record owner, whether one or more persons, of a fee simple title to any residence which is a part of the property and an undivided interest in the fee simple estate of the common areas and facilities excluding, however, those persons having such interest merely as security for the performance of an obligation. The Declarant is included within the meaning of said term so long as it is a record owner as herein provided.

Section 13. Person means an individual, corporation, partnership, association, trustee or other legal entity.

Section 14. Phase I Property means all that tract or parcel of land described as Phase I in Exhibit "A" attached hereto and, by reference, made a part hereof.

Section 15. Phase II Property means all that tract or parcel of land described as Phase II in Exhibit "A" attached hereto and, by reference, made a part hereof.

Section 16. Phase III Property means all that tract or parcel

of land described as Phase III in Exhibit "A" attached hereto and, by reference, made a part hereof.

Section 17. Property. unless the context should otherwise require, means all those tracts or parcels of land described in Exhibit "A" attached hereto and any and all property contiguous thereto, now or hereafter submitted to the provisions of the act by means of this Declaration or any duly authorized amendment hereof.

Section 18. Residence means a single family residential unit constructed or to be constructed as part of a residential building which contains two or more of such single family residential units. As used herein, the term "residence" shall be synonymous with such other terms, if any, which may be used to describe said units such as "townhouse", "apartment", "villa", "flat", "dwelling", etc.

Section 19. Residence Number means the number, letter, or combination thereof designating a residence in the development documents, the master plot plan or the supplemental plats.

Section 20. The Heritage means the entire undertaking pursuant to the development documents which shall commence with the filing of this Declaration for record in the Office of the Register of Deeds, Sedgwick County, Kansas, and shall continue thereafter until terminated as provided for herein.

## ARTICLE II

### ASSOCIATION MEMBERSHIP AND VOTING RIGHTS

Section 1. Membership. Every person who is the record owner of a fee or undivided fee interest in any residence which is a part of the property which is or may become subject by covenants of record to assessment by the Association shall be a member of the Association. Included as a member of the Association is the Declarant so long as it is a record owner as herein provided. The foregoing is not intended to include persons who hold an interest merely as security for the performance of an obligation. No owner, whether one or more persons, shall have more than one membership per residence. Membership shall be appurtenant to and may not be separated from ownership of any residence. Ownership of a residence shall be the sole qualification for membership.

Section 2. Voting Rights. The Association shall have one class of voting membership which shall consist of all owners including the Declarant. Such owners shall be entitled to one vote for each residence in which they hold the interest required for membership by Section 1 of this Article II. When more than one person holds such interest in any residence, the vote for such residence shall be exercised as they among themselves determine. In no event shall more than one vote be cast with respect to any residence.

## ARTICLE III

### PROPERTY RIGHTS

Section 1. Development Plan. The Heritage will be developed in the following manner:

(a) General. The Declarant shall construct or cause to be constructed on the Phase I property residential buildings containing a total of 16 residences and the clubhouse and swimming pools. In the event that the Declarant should submit the Phase II property to the provisions of this Declaration pursuant to and in accordance with the option set forth in subparagraph (b) of this Section 1, the Declarant shall construct or cause to be constructed on said Phase II property residential buildings containing a total of 16 residences. In the event that the Declarant should submit the Phase III property to the provisions of this Declaration pursuant to and in accordance with the option set forth in subparagraph (c) of this Section 1, the Declarant shall construct or cause to be constructed on said Phase III property residential buildings containing a total of 33 residences. Each of said residences shall be constructed substantially in accordance with the brochure hereto attached and with architectural plans and specifications entitled "The Heritage" prepared by Gossen Livingston Associates, Architects. That portion of said architectural plans which constitutes floor plans shall be filed for record simultaneously with the filing of this Declaration, in the office of the Register of Deeds, Sedgwick County, Kansas. The Declarant expressly reserves the right (a) to make minor alterations in the location of said buildings, or any one or more of them, as shown on the brochure hereto attached in order to alleviate problems of construction, if any, which may be caused by unsuitable terrain or soil conditions, and (b) to alter the composition of said buildings, or any one or more of them, as shown on said brochure by deleting therefrom any type of residence which may be determined by the Declarant on the basis of its marketing experience to be unpopular and by substituting in lieu thereof another type of residence of comparable or greater value, provided only that such substitution shall require the prior written consent of the holders of all mortgages covering the property so affected. As and when the construction of each of said buildings is completed and prior to the first conveyance of a residence contained therein there will be filed for record in the Office of the Register of Deeds, Sedgwick County, Kansas, an amendment to this Declaration to which shall be attached a verified statement of a registered architect or licensed professional engineer certifying that the brochure and plan and specifications theretofore filed of record, together with such amendments and modifications (if any) as are reflected in the supplemental brochure and plans and specifications, if any, being filed of record simultaneously with said amendment, fully and accurately depict the buildings and residences described in said amendment as built. Said amendments to this Declaration, together with the brochure and plans and specifications filed prior thereto and such supplemental brochure and plans and specifications, if any, filed simultaneously with said amendments, shall describe in their entirety the buildings and residences contained therein including the number of stories and basements, the number of residences contained in each building, the principal materials of which the buildings and residences are constructed, the approximate area of each residence, the number of rooms, immediate common area to which it has access and such other data as may be necessary for its proper identification. All of the property, except that on which residences shall have been constructed as evidenced by said brochures and plans and specifications as shall have been filed of record, shall be common areas and facilities.

(b) Option to Submit Phase II Property. Declarant hereby reserves unto itself the option, to be exercised at its sole discretion, to submit the Phase II property to the provisions of this Declaration and thereby cause said Phase II property to be and become a part of The Heritage. This option may be exercised by the Declarant only upon the execution by it of an amendment to this Declaration which shall be filed for record in the Office of the Register of Deeds, Sedgwick County, Kansas, not later than one year from the date hereof.

Any such amendment shall expressly submit the Phase II property to all of the provisions of this Declaration and the By-Laws of the Association, a copy of which is attached hereto as Exhibit "B" and, by reference, made a part hereof, as either or both may then be amended. Upon the exercise, if any, of this option, the provisions of this Declaration shall then be understood and construed as embracing the Phase I property and the Phase II property together with all improvements then constructed or to be constructed thereon. Should this option not be exercised within the term specified, it shall in all respects expire and be of no further force or effect. In such event, the Declarant shall not be obligated to impose on the Phase II property any covenants, conditions or restrictions the same as or similar to those contained herein.

(c) Option to Submit Phase III Property. Declarant hereby reserves unto itself the option, to be exercised at its sole discretion, to submit the Phase III property to the provisions of this Declaration and thereby cause said Phase III property to be and become a part of The Heritage. This option may be exercised by the Declarant only after, or simultaneously with, the exercise of its option to submit the Phase II property and upon the execution by it of an amendment to this Declaration which shall be filed for record in the Office of the Register of Deeds, Sedgwick County, Kansas, not later than two years from the date hereof. Any such amendment shall expressly submit the Phase III property to all of the provisions of this Declaration and the By-Laws of the Association, a copy of which is attached hereto as Exhibit "B" and, by reference, made a part hereof, as either or both may then be amended. Upon the exercise, if any, of this option, the provisions of this Declaration shall then be understood and construed as embracing the Phase I property, the Phase II property and the Phase III property together with all improvements then constructed or to be constructed thereon. Should this option not be exercised within the term specified, it shall in all respects expire and be of no further force or effect. In such event, the Declarant shall not be obligated to impose on the Phase III property any covenants, conditions or restrictions the same as or similar to those contained herein.

(d) Option to Submit any other Contiguous Property. If Declarant or its successor(s) hereafter acquires title to any property which is contiguous to the real property specifically described on page 1 hereof, or any property contiguous to a parcel contiguous to the property described on Exhibit "A", Declarant hereby reserves unto itself the further option, to be exercised at its sole discretion, to submit any such acquired parcel to the provisions of this Declaration. Any such land hereafter acquired by Declarant or its successor(s) shall be referred to herein as "contiguous" property. Any such option may be exercised by Declarant at any time within \_\_\_\_\_ years from the date hereof and upon the execution by it of an Amendment to this Declaration which shall be filed for record in the Office of the Register of Deeds, Sedgwick County, Kansas. Any such Amendment shall expressly submit such contiguous property to all of the provisions of this Declaration and the By-Laws of the Association, as either or both of them may then be amended, and such Amendment may identify and describe the contiguous property so involved as another Phase of the development. Upon the exercise, if any, of any such option, the provisions of this Declaration shall then be understood and construed as embracing all Phases and all other contiguous property then submitted to the Declaration together with all improvements then constructed or to be constructed thereon. Should any option herein reserved not be exercised within the period above specified, it shall in all respects expire and be of no further force or effect and Declarant shall not be obligated to impose on all such contiguous property any of the covenants, conditions or restrictions the same as or similar to those contained herein.

Section 2. Residences. Each residence, together with its undivided interest in the common areas and facilities, shall for all purposes constitute real property which may be owned in fee simple and which may be conveyed, transferred and encumbered in the same manner as any other real property, subject to the provisions of this Declaration. Each owner shall be entitled to the exclusive ownership and possession of his residence, subject to the provisions of the Act, the By-Laws of the Association and this Declaration. Each residence shall include all of the space within the boundaries thereof. There shall be no horizontal boundaries. The vertical boundaries, however, shall be the outer surfaces of all exterior walls (including enclosed patio walls) and the center line of all party walls as shown on the brochures and plans and specifications which shall be on file with the Register of Deeds, Sedgwick County, Kansas; provided, however, that all attachments to the exterior walls of a residence which are a part thereof, which protrude beyond said boundaries and which were constructed in conformity with the architectural plans and specifications, shall be deemed to be included within said boundaries. Each owner of a residence, by acceptance of a deed therefor, agrees that he has had full opportunity to inspect and examine the residence thus acquired by him and waives any claim or demand which he might otherwise have had against the Declarant or any other person whomsoever as a result of any discrepancy between the residence as it then exists and as it is described in this Declaration, and in the above described brochures and plans and specifications. The ownership of each residence shall include, and there shall pass with each residence as appurtenances thereto whether or not separately described, all of the right, title and interest of a residence owner in the property, which shall include but not be limited to an undivided interest in the common areas and facilities, membership in the Association and an undivided interest in the funds and assets held by the Association.

Section 3. Common Areas and Facilities. Ownership of the common areas and facilities shall be by the owners as tenants in common. The percentage of undivided interest of each owner in and to the common areas and facilities at any particular time shall be as set forth in Exhibit "C" attached hereto and, by reference, made a part hereof. Declarant's percentage of undivided interest in and to the common areas and facilities at any particular time shall be the percentage derived by subtracting from "100" percentum the total at said time of the percentages of all other residence owners. The percentages of undivided interest of the owners as defined in this Declaration may be altered only by the consent of all owners (or such lesser number of owners as may hereafter be prescribed by the Act) expressed in a duly recorded amendment to this Declaration, provided however, that each owner of a residence, by acceptance of a deed therefor, consents and agrees to the alteration of said percentages in accordance with and as provided for in said Exhibit "C" at such time or times, if any, as the Phase II property and/or the Phase III property and/or any contiguous property (as per Section 1 (d) of Article III) is submitted by the Declarant to the provisions of this Declaration as provided for in Section 1 of this Article III and, in furtherance thereof, each such owner irrevocably appoints the Declarant as his attorney in fact for the purpose of further evidencing such consent and agreement should the Declarant determine same to be necessary or desirable. The percentage of undivided interest of each owner in the common areas and facilities is appurtenant to the residence owned by him. No appurtenance may be separated from the residence to which it appertains and such appurtenance shall be deemed to be conveyed or encumbered or to otherwise pass with the residence whether or not expressly mentioned or described in a conveyance or other instrument describing the residence. The common areas and facilities shall remain undivided and no owner nor any other person shall bring any action for partition or division of the

whole or any part thereof except as provided in the Act and Article VIII, Section 4, hereof. Each owner and the Association may use the common areas and facilities for the purposes for which they are intended, but no such use shall hinder or encroach upon the lawful rights of the other owners.

Section 4. Limited Common Areas and Facilities. Ownership of each residence shall entitle the owner or owners thereof to the exclusive use of such portions of the common areas and facilities as may be designated on the brochures and plans and specifications provided for in Section 1 of this Article III by the same number, letter or combination thereof as may be used to designate the residence to which such portions of the common areas and facilities appertain, together with the right of ingress and egress in and upon such portions of the common areas and facilities.

#### ARTICLE IV

##### ARCHITECTURAL CONTROL

Section 1. Approval Required for Changes. No construction of any nature whatsoever shall be commenced or maintained upon any particular residence or the limited common areas and facilities appertaining thereto after the purchase of such residence from the Declarant, its successors or assigns, nor shall any exterior addition to or change or alteration therein be made unless and until the plans and specifications showing the nature, kind, shape, height, materials and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Board of Directors of the Association, or by an architectural control committee composed of three or more representatives appointed by the Board. In the event said Board, or its designated committee, fails to approve or disapprove such design and location within 45 days after said plans and specifications shall have been submitted to it, approval will not be required and this Article IV will be deemed to have been fully complied with.

#### ARTICLE V

##### MAINTENANCE AND REPAIRS

Section 1. By Residence Owner: The responsibility of a residence owner is as follows:

(a) To maintain in good condition and to repair and to replace at his expense all portions of his residence and all interior surfaces within or surrounding it (such as the surfaces of the walls, ceiling, and floors), and to maintain and to repair the fixtures therein, including the heating and air conditioning equipment, and to pay for any utilities which are separately metered to his unit. Every residence owner must perform promptly all maintenance and repair work within his residence, as aforesaid, which, if omitted, would affect the property and the condominium project in its entirety or in a part belonging to other owners; each residence owner shall be expressly responsible for the damages and liability that his failure to do so may cause. Said residence shall be maintained and repaired in accordance with the building plans originally utilized by the Declarant, copies of which are to be on file in the

office of the Association, except for changes or alterations approved by the Board of Directors as provided in this Declaration;

(b) To maintain in good condition and to repair and to replace at his expense the limited common areas and facilities appurtenant to his residence.

(c) Not to make any alterations in the portions of the residence or the residential building or the common areas and facilities which are to be maintained by the Association, or remove any portion thereof or make any additions thereto or do anything which would or might jeopardize or impair the safety or soundness thereof or which, in the sole opinion of the Board of Directors of the Association, would detrimentally affect the architectural design thereof, without first obtaining the written consent of the Board of Directors of the Association and of the residence owner, or owners, who are affected by such alterations or additions;

(d) Not to paint or make any alteration, decoration, repair, replacement or change of or on the common areas and facilities or to any outside or exterior portion of each residence, including doors, windows, or shutters, without the written approval of the Board of Directors;

(e) To promptly report to the Association or its agents any defect or need for repairs, the responsibility for the remedying of which is with the Association;

(f) Not to make repairs to any plumbing or electrical wiring located within the common areas and facilities except by plumbers or electricians authorized to do such work by the Board of Directors of the Association. The provisions as to the use of an authorized plumber or electrician shall not be applicable to an approved first mortgagee or to Declarant. Plumbing and electrical repairs within a residence shall be paid for and be the financial obligation of the owner of the residence;

(g) Any officer of the Association or any agent of the Board of Directors shall have the irrevocable right to have access to each residence from time to time during reasonable hours as may be necessary for inspection, maintenance, repair or replacement of any common areas and facilities therein or accessible therefrom, or for making emergency repairs therein necessary to prevent damage to the common areas and facilities or to another residence or residences; and

(h) To abide by and comply with the By-Laws of the Association and the rules and regulations promulgated by its directors.

Section 2. By the Association: The responsibility of the Association is as follows:

(a) To repair, maintain and replace all of the common areas and facilities, including all exterior surfaces and parking spaces, whether part of the common areas and facilities, limited common areas and facilities, or part of a residence, and to maintain and repair all landscaping and roadways in or upon the property; and

(b) To maintain, repair, and replace all conduits, ducts, plumbing, wiring and other facilities for the furnishing of any and all utility services located within the common areas and facilities.

Section 3. The Board of Directors of the Association may enter into a contract with any firm, person, or corporation for the purpose of providing for services, labor, work and materials necessary

for the maintenance and repair of the property and the obligations of the Association as hereinabove set forth in Section 2 of this Article. The Board of Directors may, by contract, empower and grant to such firm, person, or corporation the right of access granted and given to the Board of Directors hereunder.

## ARTICLE VI

### ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. Subject to the provisions of Section 7 and 10 of this Article VI, the Declarant, for each residence owned by it, hereby covenants, and each owner of any residence, by acceptance of a deed therefor whether or not it shall be so expressed in any such deed is deemed to covenant and agree to pay to the Association: (a) annual assessments or charges, and (b) special assessments for capital improvements, such assessments to be fixed, established and collected from time to time as hereinafter provided. The annual and special assessments, together with such interest thereon, shall be a charge on and a continuing lien upon the property against which each such assessment is made. A notice claiming such lien may be filed for record by the Association in the office of the Register of Deeds, Sedgwick County, Kansas, but in no event shall any such claim of lien be filed until such sums remain unpaid for not less than 30 days after the same shall become due. Such a claim of lien shall also secure all assessments which come due thereafter until the claim of lien is satisfied. Each owner shall be liable for his portion of each assessment coming due while he is the owner of a residence and his grantee shall be jointly and severally liable for such portion thereof as may be due and payable at the time of a conveyance but without prejudice to the rights of the grantee to recover from the grantor the amounts paid by the grantee therefor; provided, however, that any such grantee shall be entitled to a statement from the Association's Board of Directors or its duly authorized Manager setting forth the amount of the unpaid assessments against the grantor and such grantee shall not be liable for, nor shall the residence conveyed be subject to a lien for, any unpaid assessments against the grantor in excess of the amount therein set forth. The purchaser of a residence at a judicial or foreclosure sale shall be liable only for assessments coming due after the date of such sale.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively for the purpose of promoting the recreation, health, safety and welfare of the residents of the property and in particular for the improvement and maintenance of the property, services and facilities devoted to this purpose and related to the use and enjoyment of the common areas and facilities and of the residences situated upon the property. Such assessments shall include, but shall not be limited to, funds for the actual costs to the Association of all administration, insurance, repairs, replacements and maintenance of the residences and common areas and facilities as may be required by the Declaration and as may from time to time be authorized by the Association or its Board of Directors. Other facilities and activities to be paid for by means of such assessments include management fees, compensation for such personnel and agents and experts as shall be required for the proper administration and operation of the development, mowing grass, caring for the grounds, swimming pool and other recreational facilities, landscaping, exterior roofing (shingles) and outer surfaces of exterior walls of the residences, garbage pickup and other services furnished to residences by the Association and which are not billed direct to the residence owners, and other charges as may be required by this

Declaration or that the Association or its Board of Directors shall determine to be necessary to meet the primary purposes of the Association, including the establishment and maintenance of a reserve for repairs, replacements and maintenance and other charges as specified herein. It is anticipated that ad valorem taxes and governmental assessments, if any, upon the property will be assessed by the taxing authorities upon the residence owners, and that each such assessment will include the assessed value of the residence and of the undivided interest of the residence owner in the common areas and facilities. Any such taxes and special assessments upon the property which are not so assessed shall be included in the budget of the Association as recurring expenses and shall be paid by the Association as a common expense. Each residence owner is responsible for making his own return of taxes and such return shall include such owner's undivided interest in the common areas and facilities.

Section 3. Annual Assessments. The initial annual operating assessment shall be \$480.00 for each residence which is a part of the property, which said annual assessment shall continue and be in effect until the 31st day of December, 1973. Such sum shall be in addition to the \$80.00 which each residence owner agrees to pay in his Agreement for Purchase as and for part of the original operating fund. Annual assessments for insurance will be made in accordance with required premiums for same. Thereafter, after a consideration of the projected financial needs and other requirements of the Association as provided for and enumerated in Section 2 of this Article VI, the Board of Directors of the Association shall fix, annually, the amount of succeeding annual assessments in accordance with Section 7 of this Article VI and in accordance with the By-Laws of the Association.

Section 4. Special Assessments for Capital Improvements. In addition to the annual assessments authorized above, the Association's Board of Directors may levy special assessments for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of capital improvements upon the common areas and facilities, including the necessary fixtures and personal property related thereto; provided that any such assessment shall have the assent of two-thirds (2/3rds) of the votes of the owners who are voting in person or by proxy at a meeting duly called for this purpose, written notice of which shall be delivered to all residences or sent to all owners not less than 30 days nor more than 60 days in advance of the meeting setting forth the purpose of the meeting.

Section 5. Rate of Assessment. Subject to the provisions of Section 7 and 10 of this Article VI, and unless otherwise expressly provided herein, each owner's share of the total annual assessments and the total special assessments shall be in proportion to his percentage of undivided interest in and to the common areas and facilities as provided for in Article III, Section 3, hereof.

Section 6. Quorum for Any Action Authorized Under Sections 3 and 4. At the first meeting called, as provided for in Sections 3 and 4 of this Article VI, the presence at the meeting of owners or of proxies entitled to cast forty percent (40%) of all the votes of the Association shall constitute a quorum. If the required quorum is not forthcoming at the first meeting called, not more than two subsequent meetings may be called, subject to the notice requirement set forth in said Sections 3 and 4, and the required quorum at any such subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than 60 days following the preceding meeting.

Section 7. Date of Commencement of Annual Assessments: Due Dates. The annual assessments provided for in this Article VI shall be established on a calendar year basis and shall commence as to each residence conveyed by the Declarant to another owner on the date of each such conveyance. The initial annual operating assessment and the insurance assessment for each residence thus conveyed shall be adjusted according to the number of days remaining in the calendar year. Except for that portion of each such adjusted assessment as may be attributable to the number of days remaining in the month of conveyance which shall be paid to the Association at the time of such conveyance, each such adjusted assessment shall be paid by the owner to the Association in equal monthly installments commencing on the first day of the month following such conveyance. Thereafter, the Association's Board of Directors shall fix the amount of the annual operating assessment and the insurance assessment against each residence and when possible deliver written notice of same to each residence or send written notice of same to every owner subject thereto at least 30 days in advance of each annual assessment period. Unless otherwise provided by the Board of Directors, one-twelfth (1/12th) of the annual assessment for each residence shall become due and payable on the first day of each month during the assessment period and shall be paid to the Association when due without further notice from the Association. Until such time as the Declarant delivers management of the development to the Association as provided for in Article VII, Section 4, hereof, those residences not previously conveyed by the Declarant to other owners shall be exempt from the assessments created herein, as provided for in Section 10 of this Article VI, although the Declarant shall provide such additional funds as may be necessary to defray all common expenses accruing up to such time, such additional funds to be provided by the Declarant without cost to or claim for reimbursement by the other owners and as and when necessary in order to administer the development in the manner provided for and contemplated herein. At such time as the Declarant delivers management of the development to the Association all residences contemplated in the development owned by the Declarant and not previously conveyed by it shall be and become subject to the assessments provided for in this Article VI at such rates and on such terms and conditions as may then be applicable to all residences conveyed by the Declarant prior thereto.

Section 8. Effect of Non-Payment of Assessments: Remedies of the Association. Any assessments which are not paid when due shall be delinquent. If the assessment is not paid within 30 days after the due date, the assessment shall bear interest from the date of delinquency at the rate of eight percent (8%) per annum, and the Association may bring an action at law against the owner personally obligated to pay the same or foreclose its lien against such owner's residence. Each owner, by his acceptance of a deed to a residence, vests in the Association or its agents the right and power to bring all actions against him personally for the collection of such charges as a debt or foreclose the aforesaid lien in the same manner as other liens for the improvement of real property. The lien provided for in this Article VI shall be in favor of the Association and shall be for the benefit of all other owners. The Association, acting on behalf of the owners, shall have the power to bid on the residence at any foreclosure sale and to acquire, hold, lease, mortgage and convey the same. No owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the common areas and facilities or abandonment of his residence.

Section 9. Priority of Lien. The lien of the assessments provided for in this Article VI shall be prior and superior to all other liens except only (a) ad valorem taxes and (b) all sums unpaid on a first mortgage or deed to secure debt of record. The sale or transfer of any residence shall not affect the assessment lien; provided,

however, that the sale or transfer of any residence pursuant to the foreclosure of a first mortgage thereon, shall extinguish the lien of such assessments as to the payments thereof which became due prior to such sale or transfer. No sale or transfer shall relieve such residence from liability for any assessments there- after becoming due or from the lien thereof.

Section 10. Exempt Property. All residences which are a part of the property shall be exempt from the assessments created herein until each is conveyed by the Declarant to another owner and not so conveyed by it shall be and become subject to such assessments at such time as the Declarant delivers management of the development to the Association whereupon such assessments shall be imposed at such rates and on such terms and conditions as may then be applicable to all residences conveyed by the Declarant prior thereto. Except as provided herein, no land or improvements devoted to dwelling use and no undivided interest in the common areas and facilities shall be exempt from said assessments.

Notwithstanding any other provision hereof, it is expressly understood that so long as Declarant owns one or more residences, it shall be Declarant's responsibility to maintain the same and be responsible also for its share of the common expenses attributable to its ownership of residences.

#### ARTICLE VII ADMINISTRATION

Section 1. Responsibility for Administration. Subject to the provisions of Section 4 of this Article VII, the administration of The Heritage, the maintenance, repair, replacement and operation of the common areas and facilities and those acts required of the Association by the development documents shall be the responsibility of the Association. Such administration shall be governed by the Act and the development documents. The duties and powers of the Association shall be those set forth in the development documents together with those reasonably implied to effect the purposes of the Association and the development. Such duties and powers shall be exercised in the manner provided by the development documents.

Section 2. Management Agreements. The Association shall enter into such management agreements as may be necessary or desirable for the administration and operation of the development. The first such Management Agreement, attached hereto as Exhibit "C", shall be between the Association and Declarant (or its nominee or assignee) and shall become effective when Declarant delivers management of the development to the Association at the time specified in Section 4 of this Article VII, and shall continue for a period of not less than five years thereafter or as sooner terminated as provided in said Management Agreement.

Any other management agreements shall be entered into pursuant to resolution duly adopted by the Association's Board of Directors, each of which shall provide therein: the compensation to be paid, the term thereof which shall not exceed 10 years, the manner in which and terms upon which same may be terminated, and such other matters as may be agreed upon which are not inconsistent with the terms of the development documents. During his tenure, the person with whom the Association contracts for the administration and operation of the development (hereinafter sometimes referred to as the "Manager")

shall exercise all the powers and shall be responsible for the performance of all the duties of the Association as provided for in the Act and the development documents, excepting those powers and duties specifically and exclusively assigned to the officers, directors or members of the Association by the Act or the development documents. The Manager shall be a responsible individual or corporation, as the Board of Directors shall determine, having experience adequate for the management of a development of this type and shall be bonded in such amount as the Board of Directors shall reasonably require. Any such Manager may be a stockholder of Declarant, or a corporation or other entity owned wholly or in part by Declarant or any stockholder of Declarant. Prior to the expiration or termination of any such management agreement, or as soon thereafter as may be reasonably practicable, the Association shall enter into a new management agreement which shall become operative immediately upon the expiration or termination of the preceding management agreement or at the earliest practicable opportunity. Copies of each management agreement then currently in effect shall be made available for inspection by the owners, each of whom shall be bound by the terms and conditions thereof.

Section 3. Limitation of Liability; Indemnification. Notwithstanding the duty of the Association to maintain, repair and replace parts of the common areas and facilities, the Association shall not be liable for injury or damage caused by any latent condition of the common areas and facilities for injury caused by the elements, owners or other persons, nor shall any officer or director of the Association be liable to any owner for injury or damage caused by such officer or director in the performance of his duties unless due to the willful misfeasance or malfeasance of such officer or director. Each officer and director of the Association shall be indemnified by the owners against all expenses and liabilities, including attorneys' fees, reasonably incurred or imposed upon him in connection with any proceeding to which he may be a party or in which he may become involved by reason of his being or having been an officer or director of the Association, or any settlement, whether or not he is an officer or director of the Association at the time such expenses and liabilities are incurred, except in such cases where the officer or director is adjudged guilty of willful misfeasance or malfeasance in the performance of his duties; provided that in the event of a settlement, the indemnification shall apply only when the Board of Directors approves such settlement and reimbursement as being for the best interests of the Association.

Section 4. Administration by Declarant. Notwithstanding anything contained herein to the contrary, the Declarant shall be responsible for the administration of the development and the Association will not begin to function through its other members until such time as the Declarant shall have conveyed all of the residences now or hereafter made subject to this Declaration to the respective purchasers of same, at which time such fact shall be certified to the Association by the Declarant, and at which time the management of the development shall be delivered to the Association subject however to the aforesaid Management Agreement attached hereto as Exhibit "C", together with all books and accounts, which shall be in balance; provided, however, that the Declarant may, at its option and in the exercise of its sole discretion, deliver management of the development to the Association at such earlier or later date as may be selected by the Declarant. Until such time, the duties and powers of the Association, including those of the Board of Directors, as specified in the development documents, shall be performed by the Declarant and/or a manager employed by the Declarant on behalf of the Association (as provided for in Section 2 of this Article VII and as herein expressly authorized) at a rate of compensation which, under

the circumstances and in the sole discretion of the Declarant, shall be reasonable in amount. Such compensation if any, shall be paid as a recurring common expense of the Association and out of the annual assessments provided for in Article VI hereof and not in lieu thereof or in addition thereto.

ARTICLE VIII

INSURANCE AND CASUALTY LOSSES

Section 1. Insurance. The Association's Board of Directors shall have the authority to and shall obtain insurance for all of the improvements on the property (with the exception of improvements and betterments made by the respective owners at their expense) against loss or damage by fire or other hazards, including extended coverage, vandalism and malicious mischief, in an amount sufficient to cover the full replacement cost of any repair or reconstruction in the event of damage or destruction from any such hazard. All insurance coverage obtained by the Board of Directors shall be written in the name of the Board of Directors of the Association as Trustee for the residence owners as their interests appear herein. Such insurance shall be governed by the provisions hereinafter set forth:

(a) All policies shall be written with a company licensed to do business in the State of Kansas and holding a rating of "AAA" or better by Best's Insurance Reports.

(b) All policies shall be for the benefit of the residence owners and their mortgagees as their interests may appear.

(c) Provision shall be made for the issuance of a certificate of insurance to each owner and his mortgagee, if any, which shall specify the proportionate amount of such insurance attributable to the particular owner's residence.

(d) The original of all policies and endorsements thereto shall be deposited with the Insurance Trustee which shall hold them subject to the provisions of Section 3 of this Article VIII.

(e) Exclusive authority to adjust losses under policies hereafter in force on the property shall be vested in the Association's Board of Directors; provided, however, that no mortgagee having an interest in such losses may be prohibited from participating in the settlement negotiations, if any, related thereto.

(f) In no event shall the insurance coverage obtained and maintained by the Association's Board of Directors hereunder be brought into contribution with insurance purchased by individual owners or their mortgagees.

(g) Each owner may obtain additional insurance at his own expense; provided, however, that no owner shall be entitled to exercise his right to maintain insurance coverage in such a way as to decrease the amount which the Association, on behalf of all of the owners and their mortgagees, may realize under any insurance policy which the Association's Board of Directors may have in force on the property at any particular time.

(h) Any owner who obtains an individual insurance policy covering any portion of the property, other than improvements and betterments made by such owner at his expense and personal property belonging to such owner, shall be required to file a copy of each

such individual policy with the Association's Board of Directors within 30 days after purchase of such insurance.

(i) It shall be the individual responsibility of each owner at his own expense to provide, as he sees fit, title insurance on his individual residence, homeowner's liability insurance, theft and other insurance covering improvements, betterments and personal property damage and loss.

(j) The Association's Board of Directors shall conduct an annual insurance review which shall include a replacement cost appraisal, without respect to depreciation, of all improvements on the property (with the exception of improvements and betterments made by the respective owners at their expense) by one or more qualified persons at least one of whom should be a qualified building cost estimator.

(k) The Association's Board of Directors shall be required to make every reasonable effort to secure insurance policies that will provide for the following: (1) a waiver of subrogation by the insurer as to any claims against the Association's Board of Directors, its Manager, the owners and their respective servants, agents and guests; (2) a waiver by the insurer of its right to repair or reconstruct instead of paying cash; (3) that the master policy on the property cannot be cancelled, invalidated or suspended on account of any one or more individual owners; (4) that the master policy on the property cannot be cancelled, invalidated or suspended on account of the conduct of any director, officer or employee of the Association or its duly authorized Manager without a prior demand in writing delivered to the Association to cure the defect and the allowance of a reasonable time thereafter within which the defect may be cured by the Association, its Manager, any owner or mortgagee; and (5) that any "other insurance" clause in the master policy exclude individual owners' policies from consideration.

Section 2. No Partition. There shall be no judicial partition of the property or any part thereof, nor shall the Declarant or any person acquiring any interest in the property or any part thereof seek any such judicial partition until the happening of the conditions set forth in Section 4 of this Article VIII in the case of damage or destruction or unless the property has been removed from the provisions of the Act as provided for in Article XIII, Section 3, hereof.

Section 3. Insurance Trustee. (a) All insurance policies purchased by and in the name of the Board of Directors of the Association shall provide that proceeds covering property losses shall be paid to the Board of Directors of the Association, as Insurance Trustee.

(b) The duty of the Insurance Trustee shall be to receive such proceeds as are paid and delivered to it and to hold such proceeds in trust for the benefit of the owners and their mortgagees in the following shares, but which shares need not be set forth in the records of the Insurance Trustee. An undivided share of such proceeds on account of damage or destruction to the common areas and facilities shall be held in trust for the owners in accordance with their respective percentages of undivided interest in and to the common areas and facilities as provided for in Article III, Section 3 hereof. Proceeds on account of damage or destruction to residences shall be held in trust for the owners of the damaged or destroyed residences in proportion to the cost of repairing or reconstructing the damage or destruction suffered by each such owner. In the event that a mortgage endorsement has been issued as to any particular residence, the share of such residence owner shall be held in trust for such owner and his mortgagee

as their interests may appear.

(c) Proceeds of insurance policies received by the Insurance Trustee shall be disbursed as follows:

- (1) If the damage or destruction for which the proceeds are paid is to be repaired or reconstructed, such portion thereof as may be required for such purpose shall be disbursed in payment of such repairs or reconstruction as hereinafter provided. Any proceeds remaining after defraying the cost of repairs or reconstruction shall be disbursed to the beneficial owners, remittances to residence owners and their mortgagees being payable jointly to them. This is a covenant for the benefit of any mortgagee of a residence and may be enforced by such mortgagee.
- (2) If it is determined as provided for in Section 4 of this Article VIII that the damage or destruction for which the proceeds are paid shall not be repaired or reconstructed, such proceeds shall be disbursed to such persons as therein provided.
- (3) The Board of Directors of the Association as Insurance Trustee shall determine whether or not the damage or destruction is to be repaired or reconstructed and whether the damage or destruction was to the common areas and facilities or one or more residences or both. If the damage or destruction is not to be repaired or reconstructed, the disbursements shall be made by the Insurance Trustee in accordance with the terms of Section 4(c) of this Article VIII.

If the damage or destruction is to the common areas and facilities and is to be repaired or reconstructed, the mortgagee known by the Insurance Trustee to have the largest interest in or lien upon such common areas and facilities may direct that disbursements be made by the Insurance Trustee to those persons and in such amounts as may be specified therein or, in the alternative, it may authorize the Insurance Trustee to make disbursements upon and pursuant to such written authorizations as may be submitted to it by an architect or other person named therein as having been employed by the Association to supervise such repairs or reconstruction.

If the damage or destruction is to one or more residences and is to be repaired or reconstructed, the mortgagee or mortgagees, if any, known by the Insurance Trustee to have an interest in or lien upon such residence or residences may direct that disbursements be made by the Insurance Trustee to those persons and in such amounts as may be specified therein or, in the alternative, it may authorize the Insurance Trustee to make disbursements upon and pursuant to such written authorizations as may be submitted to it by an architect or other person named herein as having been employed by the Association to supervise such repairs or reconstruction.

**Section 4. Damage and Destruction.** (a) Immediately after the damage or destruction by fire or other casualty to all or any part of the property covered by insurance written in the name of the Association, the Board of Directors or its duly authorized agent shall proceed with the filing and adjustment of all claims arising under such insurance and obtain reliable and detailed estimates of the cost of repair or reconstruction of the damaged or destroyed property. Repair

or reconstruction, as used in this paragraph, means repairing or restoring the property to substantially the same condition in which it existed prior to the fire or other casualty with each residence and the common areas and facilities having the same vertical and horizontal boundaries as before.

(b) Any such damage or destruction shall be repaired or reconstructed unless at least ninety percent (90%) of the total vote of the Association shall decide within 120 days after the casualty, not to repair or reconstruct. No mortgagee shall have any right to participate in the determination as to whether the damage or destruction shall be repaired or reconstructed.

(c) In the event that it should be determined by the Association in the manner prescribed above that the damage or destruction shall not be repaired or reconstructed, then and in that event (1) the property shall be deemed to be owned in common by the residence owners, (2) the undivided interest in the property owned in common which shall appertain to each residence owner shall be the proportion that the value placed on his residence by the Board of Directors for insurance premium assessment purposes bears to the value so placed on all residences for such purposes, (3) any liens affecting any of the residences shall be deemed to be transferred in accordance with the existing priorities to the percentage of undivided interest of the residence owner in the property, and (4) the property shall be subject to an action for partition at the suit of any residence owner, in which event the net proceeds of sale shall be paid to the Insurance Trustee. Said net proceeds of sale, together with the net proceeds of the insurance on the property, shall be considered as one fund which shall be divided among all of the residence owners in a percentage equal to the percentage of undivided interest owned by each owner in the property, after first paying out of the respective share of the residence owners, to the extent sufficient for the purpose, all liens of the undivided interest in the property owned by each residence owner. Disbursements to such owners shall be made as provided for in Section 3 of this Article VIII.

Section 5. Repair and Reconstruction. (a) If the damage or destruction for which the insurance proceeds are paid to the Insurance Trustee is to be repaired or reconstructed and such proceeds are not sufficient to defray the cost thereof, the Board of Directors shall, without a vote of the members, levy a special assessment against all owners of the damaged residences, and against all owners in the case of damage to the common areas and facilities, in sufficient amounts to provide funds to pay such excess cost of repair or reconstruction. Additional assessments may be made in like manner at any time during or following the completion of any repair or reconstruction. Such assessments against residence owners for damage to residences shall be in proportion to the cost of repair and reconstruction of their respective residences. Such assessments on account of damage to the common areas and facilities shall be in proportion to the owner's share in the common areas and facilities.

(b) Any and all sums paid to the Association under and by virtue of those special assessments provided for above to defray the estimated excess cost of repair or reconstruction shall be deposited by the Association with the Insurance Trustee. The proceeds from insurance and assessments, if any, received by the Insurance Trustee, when the damage or destruction is to be repaired or reconstructed, shall be disbursed as provided for in Section 3 of this Article VIII.

Section 6. Minor Repairs. (a) Notwithstanding the foregoing provisions of this Article VIII, in the event of damage by fire or

other casualty to either the common areas and facilities or a single residence covered by insurance written in the name of the Association and if the insurance proceeds initially offered or paid therefor are less than Five Thousand Dollars (\$5,000.00) and the estimated cost of repairing such damage is less than twice the amount of such proceeds, then the damage shall be repaired in accordance with the following provisions.

(b) If the damage is confined to the common areas and facilities, such insurance proceeds shall be used by the Association to defray the cost of such repairs. If the cost of such repairs is less than the amount of such insurance proceeds, the excess shall be retained by the Association or its duly authorized agent and placed in the reserve maintenance fund or such other fund as may be established for the purpose of providing for the maintenance, repair and replacement of the common areas and facilities. If the cost of such repairs exceeds the amount of such insurance proceeds, such excess may be provided, either by means of a special assessment levied by the Board of Directors, without a vote of the members, against all owners in proportion to each owner's share in the common areas and facilities or by means of an appropriation from the reserve maintenance fund or such other fund as may be established for the purpose of providing for the maintenance, repair and replacement of the common areas and facilities as the Board of Directors in the exercise of its sole discretion may determine.

(c) If the damage is confined to a single residence, such insurance proceeds shall be used by the Association to defray the cost of such repairs. If the cost of such repairs is less than the amount of such insurance proceeds, the excess shall be paid jointly to the owner and his mortgagee, if any, who may use such proceeds as they alone may determine. If the cost of such repairs exceeds the amount of such insurance proceeds, such excess shall be provided by means of a special assessment levied by the Board of Directors, subject to Article V, Section 4, hereof and without a vote of the members, against the owner of the damaged residence. Payments for repairs provided for in this subparagraph (c) shall be made only after all such repairs have been completed and approved by the Association, the owner and his mortgagee, if any, which approval shall not be unreasonably withheld.

## ARTICLE IX

### CONDEMNATION

Section 1. General. Whenever all or any part of the property shall be taken by any authority having the power of eminent domain, each owner shall be entitled to notice thereof and to participate in the proceedings incident thereto unless otherwise prohibited by law. The award made for such taking shall be payable to the Association if such award amounts to less than One Thousand Dollars (\$1,000.00) and to the Insurance Trustee if such award amounts to One Thousand Dollars (\$1,000.00) or more. Unless otherwise provided by law at the time of such taking, any award made therefor shall be disbursed by the Association or the Insurance Trustee, as the case may be, as hereinafter provided in this Article IX.

Section 2. Common Areas and Facilities. If the taking is confined to the common areas and facilities on which improvements shall have been constructed and if at least ninety percent (90%) of the total vote of the Association shall decide within 120 days after such taking to replace said improvements, or any part thereof,

on the remaining land included in the common areas and facilities and according to plans therefor first approved by the Association, then the Board of Directors shall arrange for such replacement and the Association or the Insurance Trustee, as the case may be, shall disburse the proceeds of such award in the same manner as they are required to disburse insurance proceeds where damage or destruction to the common areas and facilities is to be repaired or reconstructed, as provided for in Article VIII hereof; subject, however, to the right hereby reserved to the Association and to be exercised by a majority of the total vote thereof to provide for the disbursement by the Insurance Trustee of the remaining proceeds held by it (after payment of all costs incident to such replacement) to the owners or any one or more of them in amounts disproportionate to their percentages of undivided interest in the common areas and facilities as established herein, which disproportionate amounts shall correspond with the disproportionate damages sustained by the owners or any one or more of them as the Association may determine by a majority of the total vote thereof. If at least ninety percent (90%) of the total vote of the Association shall not decide within 120 days after such taking to replace such improvements or if the taking is confined to the common areas and facilities on which no improvements shall have been constructed, then the Association or the Insurance Trustee, as the case may be, shall disburse the proceeds of the award in the manner hereinabove provided for the disbursement of the remaining proceeds of an award after payment of all costs incident to replacement of improvements taken, including the right reserved to the Association to provide for the disbursement by the Insurance Trustee of the remaining proceeds held by it to the owners in disproportionate amounts.

**Section 3. Residences.** If the taking includes one or more residences, or any part or parts thereof, whether or not there is included in the taking any part of the common areas and facilities, then the award shall be disbursed and all related matters, including without limitation alteration of the percentages of undivided interest of the owners in the common areas and facilities shall be handled pursuant to and in accordance with the consent of all owners (or such lesser number of owners as may then be prescribed by the Act for the purpose of altering the percentages of undivided interest of the owners in the common areas and facilities) expressed in a duly recorded amendment to this Declaration. In the event that such an amendment shall not be recorded within 120 days after such taking, then such taking shall be deemed to be and shall be treated as damage or destruction which shall not be repaired or reconstructed as provided for in Article VIII, Section 4, hereof, whereupon the development will be terminated in the manner therein prescribed, unless then otherwise provided by law.

#### ARTICLE X

##### USE RESTRICTIONS

**Section 1. Residential Purposes.** All residences contemplated in the development shall be, and the same hereby are, restricted exclusively to residential use. No structures of a temporary character, trailer, basement, tent, shack, carport, garage, barn or other out-building shall be used as a residence on any portion of the property at any time either temporarily or permanently.

**Section 2. Estate in Fee Simple.** Each residence shall be conveyed as a separately designated and legally described estate

in fee simple subject to the terms, conditions and provisions hereof and of the Act.

Section 3. Construction and Sale Period. Notwithstanding any provisions contained herein to the contrary, it shall be expressly permissible for the Declarant or the builder of said residences to maintain, during the period of construction and sale of said residences, upon such portion of the property as the Declarant may deem necessary, such facilities as in the sole opinion of the Declarant may be reasonably required, convenient or incidental to the construction and sale of said residences, including, but without limitation, storage areas, construction yards, signs, model residences, construction offices, sales offices and business offices.

Section 4. Animals and Pets. No animals, livestock or poultry of any kind shall be raised, bred or kept on any part of the property, except that dogs, cats or other household pets may be kept by the respective owners in their respective residences provided that they are not kept, bred or maintained for any commercial purpose and do not endanger the health or, in the sole discretion of the Association's Board of Directors, unreasonably disturb the owner of any residence or any resident thereof.

Section 5. Signs and Business Activities. No signs, advertising or otherwise, billboards, unsightly objects, or nuisances shall be erected, placed or permitted to remain on the property, nor shall the property be used in any way or for any purpose which may endanger the health of or unreasonably disturb the owner of any residence or any resident thereof. No business activities of any kind whatever shall be conducted in any building or in any portion of the property; provided, however, the foregoing covenants shall not apply to the business activities, signs and billboards of the Declarant, its agents or assigns during the construction and sale period, or of any resident manager thereafter.

Section 6. Clotheslines, Garbage Cans, Etc. All clotheslines, equipment, garbage cans, service yards, woodpiles and storage piles shall be kept within the owner's area so provided by Declarant for same, screened by adequate planting or fencing so as to conceal them from view of neighboring residences and streets. All rubbish, trash and garbage shall be regularly removed from the premises and shall not be allowed to accumulate thereon. All clotheslines shall be confined within the patio areas.

Section 7. Patios and Other Common Areas. Except in the individual enclosed patio portion of a residence, no planting or gardening shall be done, and no fences, hedges or walls shall be erected or maintained upon said property except such as are installed in accordance with the initial construction of the buildings located thereon or as approved by the Association's Board of Directors or their designated representatives. Except for the right of ingress and egress, the owners of residences are hereby prohibited and restricted from using any of said property outside of their respective residences and the patios and other limited common areas and facilities appurtenant thereto, except as may be allowed by the Association's Board of Directors or as expressly provided herein. It is expressly acknowledged and agreed by all parties concerned that this paragraph is for the mutual benefit of all owners in the development and is necessary for the protection of said owners.

Section 8. Exterior Antennas. No exterior television or radio antennas of any sort shall be placed, allowed or maintained

upon any portion of the improvements to be located upon the property nor upon any structure situated upon the property other than an aerial for a master antenna system, should any such master system or systems be utilized and require any such exterior antenna.

Section 9. Leasing of Residences. Entire residences may be rented provided the occupancy is for not less than twelve (12) months and such occupancy is only by the lessee and his immediate family or as may be approved or otherwise provided for by the Association's Board of Directors. No room may be rented and no transient tenants accommodated. This Section 9 shall not apply, however, to any lease or leases which may be entered into by the Declarant.

#### ARTICLE XI

#### SALES, LEASES AND MORTGAGES

Section 1. Sales and Leases: Right of First Refusal. In order to assure a community of congenial owners and thus protect the value of the residences, the sale, leasing and mortgaging of residences by any owner other than the Declarant shall be subject to the following provisions so long as the property shall be owned in accordance with the terms and conditions of this Declaration and the Act.

(a) Notice to Association. A residence owner intending to make a bona fide sale or a bona fide lease of his residence shall give notice in writing to the Association's Board of Directors of such intention, together with the name and address of the intended purchaser or lessee, the terms of the proposed transaction and such other information as the Board may reasonably require.

(b) Alternatives of Association. Within 30 days after receipt of such notice, the Association's Board of Directors may (1) approve the transaction in writing, (2) fail to respond in which event the transaction will be deemed approved, (3) notify the seller or lessor in writing that the Association will furnish a purchaser or lessee approved by the Board of Directors who will accept the transaction upon terms as favorable to the seller or lessor as the terms stated in the notice, except that a purchaser or lessee furnished by the Association may have 30 days subsequent to the date of such notice within which to close the transaction, (4) notify the seller or lessor in writing that the Association will purchase or lease upon the same terms and conditions upon which the owner proposes to sell or lease, in which event the sale or lease shall be closed in accordance with said terms.

(c) No Waiver. Approval by the Association's Board of Directors of any sale or lease shall not constitute or be deemed to be a waiver of the necessity for such consent or approval to any further conveyance or lease or to any assignment or subletting of any previously approved leasing. The approval by the Board shall be in recordable form and shall be delivered to the purchaser or lessee and recorded in the Office of the Register of Deeds, Sedgwick County, Kansas.

(d) Sale by Mortgagee. Should the residence of any owner become subject to a first mortgagee to secure debt as security in good faith or for value, the holder thereof upon becoming the owner of such interest through whatever means, or the seller at any sale under a power of sale therein contained, shall have the unqualified right to sell, lease or otherwise dispose of said interest

and the fee ownership of said residence, without offer to the Association, notwithstanding the above provisions, but the seller shall otherwise sell and the purchaser or lessee shall take subject to the Declaration and By-Laws.

Section 2. Mortgaging. Any owner may mortgage his residence and all interest therein to his former owner, a bank, an insurance company, a federal or Kansas savings and loan association or a corporation or partnership acting as a mortgage broker whose primary interest in making any such mortgage is the placement and servicing of same with and on behalf of one of such other aforesaid qualified lending institutions. The existence of a "permanent commitment" from any such lending institution to purchase any such mortgage from such mortgage broker shall be conclusive evidence of such mortgage broker's intent to place any such mortgage with one of such other lending institutions whether or not such commitment is ultimately fulfilled. A mortgage to any lending institution other than described above shall require the prior approval of the Association's Board of Directors, which approval may be upon conditions determined by the Board of Directors or may be arbitrarily withheld.

Section 3. Void Transactions. Any sale, mortgage or lease which is not authorized pursuant to the terms of this Declaration shall be void unless subsequently approved by the Association's Board of Directors.

Section 4. Exemption from Restrictions. The foregoing restrictions against selling, leasing and mortgaging of residences as set forth in this Article XI shall not apply to the holder of any promissory note secured in whole or in part by a duly executed and recorded mortgage to secure debt, security deed, loan deed or other similar instrument which creates a lien on such portion of the property as may be owned by the Declarant at any particular time, nor to any purchaser of one or more residences at a foreclosure of any such instrument or at a sale of one or more residences under power contained in any such instrument, nor to any other person who purchases such residence or residences from the purchaser at foreclosure or at sale under power except to ultimate purchasers of individual residences who occupy the same.

Section 5. Further Provisions for Protection of Mortgagees. Notwithstanding any other provisions hereof:

(a) The holder of any mortgage shall be entitled to written notification from the Association at least thirty days prior to the effective date of (i) any change in the condominium documents and (ii) any change of manager (not including change in employees of corporate manager) of the condominium project.

(b) The holder of any mortgage shall be entitled to written notification from the Association of any default by its mortgagor in the performance of the mortgagor's obligations under the condominium documents which is not cured within thirty days.

(c) Unless all holders of first mortgage liens on individual residences have given their prior written approval, the Association shall not:

- (i) fail to employ a professional manager for the condominium project;
- (ii) change the pro rata interest or obligations of

- any residence for purposes of levying assessments and charges and determining shares of the common areas and facilities and proceeds of the project;
- (iii) partition or subdivide any residence or the common areas and facilities of the project; nor
  - (iv) by act or omission seek to abandon the condominium status of the project except as provided by statute in case of substantial loss to the residences and common areas and facilities of the condominium project.

## ARTICLE XII

### EASEMENTS

Section 1. Enjoyment of Common Areas and Facilities. Every owner shall have a right and easement of enjoyment in and to the unlimited common areas and facilities (as distinguished from limited common areas and facilities) and such easement shall be appurtenant to and shall pass with the title to every residence, subject to the following provisions: (a) the right of the Association's Board of Directors to limit the number of guests that may use the common areas and facilities, (b) the right of the Association's Board of Directors to charge reasonable admission and other fees for the use of any recreational facilities situated upon the common areas and facilities; and (c) the right of the Association's Board of Directors to suspend the voting rights and right to use of the recreational facilities by an owner for any period during which any assessment against his residence remains unpaid, and for a period not to exceed 30 days for any infraction of its published rules and regulations. Any owner may delegate, in accordance with the By-Laws, his right of enjoyment to the common areas and facilities to the members of his family or his tenants who reside on the property.

Section 2. Encroachments and Support. Each residence and the property included in the common areas and facilities shall be subject to an easement for encroachments created by construction, settling and overhangs as designed or constructed by the Declarant. A valid easement for said encroachments and for the maintenance of same, so long as they stand, shall and does exist. In the event that any building is partially or totally destroyed and then rebuilt, the owners of the residences so affected agree that minor encroachments of parts of the adjacent residence or common area due to construction shall be permitted and that a valid easement for said encroachments and the maintenance thereof shall exist. Every portion of a residence contributing to the support of an abutting residence shall be burdened with an easement of support for the benefit of such abutting residence. Also, a valid easement shall and does exist in favor of each owner to make reasonable use, not inconsistent with the terms of this Declaration, of the exterior wall of any adjoining residence where the outer surface of such wall shall serve and separate any portion of such owner's residence or limited common areas and facilities appertaining thereto and such adjoining residence notwithstanding the inclusion of such wall within the vertical boundaries of such adjoining residence.

Section 3. Utilities, Etc. There is hereby granted a blanket easement upon, across, over and under all of the property for ingress, egress, installation, replacing, repairing and maintaining a master television antenna system and all utilities including, but

not limited to, water, sewers, telephones and electricity. By virtue of this easement, it shall be expressly permissible for the providing utility company to erect and maintain the necessary poles and other necessary equipment on said property and to affix and maintain utility wires, circuits and conduits on, above, across and under the roofs and exterior walls of the residences. Notwithstanding anything to the contrary contained in this paragraph, no sewers, electrical lines, water lines, or other utilities may be installed or relocated on said property except as initially programed and approved by the Declarant or thereafter approved by the Declarant or the Association's Board of Directors. Should any utility furnishing a service covered by the general easement herein provided request a specific easement by separate recordable document, the Declarant shall have the right to grant such easement on said property without conflicting with the terms hereof. The easements provided for in this Article XII shall in no way affect any other recorded easement on said property.

Section 4. Other. There is hereby granted a blanket easement to the Association, its directors, officers, agents and employees, to any Manager employed by or on behalf of the Association and to all policemen, firemen, ambulance personnel and all similar persons to enter upon the property or any part thereof in the proper performance of their respective duties. Except in the event of emergencies, the rights accompanying the easements provided for in this Article XII shall be exercised only during reasonable daylight hours and then, whenever practicable, only after advance notice to and with the permission of the owner or owners directly affected thereby.

#### ARTICLE XIII

##### GENERAL PROVISIONS

Section 1. Amendment: By Declarant. Amendments to this Declaration for the purpose of further identifying the residences contemplated in the development shall be made as and when the construction of each of the buildings is completed. Amendments to this Declaration for the purpose of submitting Phase II and Phase III property and any contiguous property to the provisions of this Declaration may be made pursuant to Article III, Section 1, hereof. Each such amendment shall be approved by the Declarant and filed for record in the Office of the Register of Deeds, Sedgwick County, Kansas, at which time the same shall become effective. Other amendments which are authorized by this Declaration and the Act and made prior to the date on which the Declarant delivers management of the development to the Association shall become effective when approved and recorded in the manner hereinabove provided; provided, however, that such amendments shall not affect materially any rights of any then existing mortgage holders or residence owners. In the event that such an amendment does affect materially any rights of any then existing mortgage holders or residence owners, the amendment shall be valid only upon the written consent thereto of all of the then existing mortgage holders and a majority of the then existing residence owners. Such amendment shall be certified by the Declarant as having been duly approved and shall be effective when recorded in the Office of the Register of Deeds, Sedgwick County, Kansas.

Section 2. Amendment: Other. Amendments to this Declaration, other than those provided for in Section 1 of this Article XIII, which are authorized by this Declaration and the Act, shall be

proposed and adopted in the following manner:

(a) Notice. Notice of the subject matter of the proposed amendment shall be included in the notice of any meeting of the Association at which a proposed amendment shall be considered.

(b) Resolution. A resolution adopting a proposed amendment may be proposed by either the Board of Directors of the Association or by the membership of the Association, and after being proposed and approved by one of such bodies it must be approved by the other. Directors and members not present at the meetings considering the amendment may express their approval in writing. Such approvals must be by a majority of the Directors and, unless otherwise specified in this Declaration or the Act, by not less than fifty-one percent (51%) of the total vote of the Association; provided, however, that in the event the proposed amendment should affect materially any rights of any then existing mortgage holders, such amendment shall also require the written consent thereto of all of the then existing mortgage holders, and, provided further, that if the Association shall vote to amend the By-Laws in any respect, such By-Laws amendment shall be set forth in an amendment to this Declaration as required by the Act, and such amendment to this Declaration shall be valid when approved by a majority of the total vote of the Association.

(c) Recording. A copy of each amendment provided for in this Section 2 shall be certified by the Board of Directors of the Association as having been duly adopted and shall be effective when filed for record in the Office of the Register of Deeds, Sedgwick County, Kansas.

Section 3. Termination. The development shall be terminated and the property removed from the provisions of the Act in the following manner:

(a) Agreement. All of the residence owners may remove the property from the provisions of the Act by an instrument to that effect, duly recorded, provided that the holders of all liens affecting any of the residences consent thereto or agree, in either case by instruments duly recorded, that their liens be transferred to the percentage of undivided interest of the residence owner in the property.

(b) Destruction. In the event it is determined in the manner provided in Article VIII, Section 4, hereof, that the property shall not be repaired or reconstructed after casualty, the development will be terminated and the development documents revoked pursuant to Article VIII, Section 4(c) hereof, unless then otherwise provided by law. The determination not to repair or reconstruct after casualty shall be evidenced by a certificate of the Association certifying as to facts effecting the termination, which certificate shall become effective upon being recorded in the Office of the Register of Deeds, Sedgwick County, Kansas.

(c) Condemnation. In the event that one or more residences, or any part or parts thereof, shall be taken by any authority having the power of eminent domain and the consent of all owners (or such lesser number of owners as may then be prescribed by the Act for the purpose of altering the percentages of undivided interest of the owners in the common areas and facilities) shall not be expressed in an amendment to this Declaration duly recorded within 120 days after such taking as provided for in Article IX, Section 3, hereof, the development will be terminated and the development documents revoked pursuant to Article VIII, Section 4(c) hereof, unless then otherwise provided by law. Such taking shall be evidenced by a certificate of the Association certifying as to facts effecting

the termination, which certificate shall become effective upon being recorded in the Office of the Register of Deeds, Sedgwick County, Kansas.

(d) Ownership After Termination. After termination of the development, the rights of the residence owners and their respective mortgagees and lienees shall be determined in the manner provided in Article VIII, Section 4 hereof.

Section 4. Covenants Running With the Land. All provisions of this Declaration shall be construed to be covenants running with the land, and with every part thereof and interest therein, including, but not limited to, every residence and the appurtenances thereto; and every residence owner and claimant of the land or any part thereof or interest therein, and his heirs, executors, administrators, successors and assigns shall be bound by all of the provisions of this Declaration.

Section 5. Deeds. The deeds by which the Declarant will describe and convey the residences shall be substantially in the form attached hereto as Exhibit "D" and, by reference, made a part hereof. Any transfer of a residence shall include all appurtenances thereto whether or not specifically described, including, but not limited to, the owner's membership in the Association and his percentage of undivided interest in the common areas and facilities and in the funds and assets held by the Association.

Section 6. Adjoining Property to North. Adjoining Leisure Living First Addition to the north is property under long-term lease to the Wichita Racquet Club, Inc., which said leased property is legally described as "Ruby J. Addition, Sedgwick County, Kansas." Declarant has been informed of the long-range development plans of Wichita Racquet Club, Inc., which plans encompass the following:

"Installation of fully lighted outdoor courts between the indoor facility and Leisure Living First Addition, with outdoor tennis pro shop, additional parking, and outdoor swimming pool; additional landscaping and planting of trees; possible installation of two additional indoor courts extending west from the existing indoor tennis facility; and possible additional enlargement of the indoor facility to the east."

Declarant has heretofore agreed with the Wichita Racquet Club, Inc., that Declarant will not object to the further development and use of the Wichita Racquet Club property as above outlined, or development and use in substantial conformity therewith, and all future owners, lessees and/or occupants of any residence in this condominium development, and their successors and assigns, by acceptance of deeds and/or leases to said residences and/or by entering possession of said residences, likewise covenant that they will not object to said development and agree that said acceptance shall constitute and be tantamount to a written consent to said future development of the Wichita Racquet Club, Inc., property.

It is further understood that this Section shall continue to be applicable and binding, even if in the future Declarant or its successor(s) acquires part of said "Ruby J. Addition, Sedgwick County, Kansas," and submits the same to the terms and conditions of this Declaration as hereinabove authorized.

Section 7. Maintenance of Open Spaces in Event of Association's Failure to do so. Upon the failure of the Association to

properly and adequately maintain any part of the open space within the condominium development, the City of Wichita may cause notice to be served on the Association of its failure to so maintain, setting out the manner in which it has failed to perform, and granting it ten days within which to perform all of the items designated in said notice. After said ten days the City may enter upon the property to perform the work described in said notice of deficiency, and the cost of such work performed by the City may be assessed against the property in the same manner as provided by law for such assessment and said assessment may be established as a lien upon the land. Should the Association, upon receipt of said notice, take exception to any deficiencies designated therein, the Association may within the ten-day period appeal to the Board of City Commissioners for a hearing on the propriety of the contents of said notice, and until said appeal is heard and determined the matter shall be stayed.

Section 8. By-Laws. A true copy of the By-Laws of the Association, which shall (as from time to time validly amended) together with this Declaration and the Act govern the administration of the development, is attached hereto as Exhibit "B" and, by reference, made a part hereof.

Section 9. Enforcement. Each owner shall comply strictly with the By-Laws and with the administrative rules and regulations adopted pursuant thereto, as either of the same may be lawfully amended from time to time, and with the covenants, conditions and restrictions set forth in this Declaration and in the deed to his residence. Failure to comply with any of the same shall be grounds for an action to recover sums due, for damages or injunctive relief or both maintainable by the Board of Directors on behalf of the Association or, in a proper case, by an aggrieved owner. Failure by the Association or any owner to enforce any of the foregoing shall in no event be deemed a waiver of the right to do so thereafter.

Section 10. Severability. Invalidation of any covenant, condition, restriction or other provision of this Declaration on the By-Laws shall not affect the validity of the remaining portions thereof which shall remain in full force and effect.

Section 11. Gender and Grammar. The singular wherever used herein shall be construed to mean the plural when applicable, and the necessary grammatical changes required to make the provisions hereof apply either to corporations or individuals, men or women, shall in all cases be assumed as though in each case fully expressed.

Section 12. Agent for Service of Process. The Declarant hereby designates Willard B. Thompson of Fleeason, Gooing, Coulson & Kitch, 1600 Vickers-KSB&T Building, Wichita, Sedgwick County, Kansas, 67202, to receive service of process in the cases provided for in the Act.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has hereunto set its hand and seal this \_\_\_\_ day of \_\_\_\_\_, 197\_\_.

LEISURE LIVING, INC.

ATTEST:

By \_\_\_\_\_  
President

\_\_\_\_\_  
Secretary

"DECLARANT"

STATE OF KANSAS        )  
                          ) SS  
COUNTY OF SEDGWICK    )

BE IT REMEMBERED that on this \_\_\_\_\_ day of \_\_\_\_\_, 197\_\_, before me, the undersigned, a Notary Public, duly commissioned, in and for the county and state aforesaid, came N. LEE ARONFELD, President of LEISURE LIVING, INC., a corporation of the State of Kansas, personally known to me to be such officer, and to be the same person who executed as such officer the foregoing instrument of writing in behalf of said corporation, and he duly acknowledged the execution of the same for himself and for said corporation for the uses and purposes therein set forth.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal on the day and year last above written.

\_\_\_\_\_  
Notary Public

My commission expires:

THE HERITAGE

Percentage of Undivided Interest of Each Owner in  
and to the Common Areas and Facilities:

<u>Residence No.</u>	<u>(a)</u>	<u>(b)</u>	<u>(c)</u>
1	6.25	3.125	1.5384
2	6.25	3.125	1.5384
3	6.25	3.125	1.5384
4	6.25	3.125	1.5384
5	6.25	3.125	1.5384
6	6.25	3.125	1.5384
7	6.25	3.125	1.5384
8	6.25	3.125	1.5384
9	6.25	3.125	1.5384
10	6.25	3.125	1.5384
11	6.25	3.125	1.5384
12	6.25	3.125	1.5384
13	6.25	3.125	1.5384
14	6.25	3.125	1.5384
15	6.25	3.125	1.5384
16	6.25	3.125	1.5384
17	-	3.125	1.5384
18	-	3.125	1.5384
19	-	3.125	1.5384
20	-	3.125	1.5384
21	-	3.125	1.5384
22	-	3.125	1.5384
23	-	3.125	1.5384
24	-	3.125	1.5384
25	-	3.125	1.5384
26	-	3.125	1.5384
27	-	3.125	1.5384
28	-	3.125	1.5384
29	-	3.125	1.5384
30	-	3.125	1.5384
31	-	3.125	1.5384
32	-	3.125	1.5384
33	-	-	1.5385
34	-	-	1.5385
35	-	-	1.5385
36	-	-	1.5385
37	-	-	1.5385
38	-	-	1.5385
39	-	-	1.5385
40	-	-	1.5385
41	-	-	1.5385
42	-	-	1.5385
43	-	-	1.5385
44	-	-	1.5385
45	-	-	1.5385
46	-	-	1.5385
47	-	-	1.5385
48	-	-	1.5385
49	-	-	1.5385
50	-	-	1.5385
51	-	-	1.5385
52	-	-	1.5385
53	-	-	1.5385
54	-	-	1.5385
55	-	-	1.5385

<u>Residence No.</u>	<u>(a)</u>	<u>(b)</u>	<u>(c)</u>
56	-	-	1.5385
57	-	-	1.5385
58	-	-	1.5385
59	-	-	1.5385
60	-	-	1.5385
61	-	-	1,5385
62	-	-	1,5385
63	-	-	1,5385
64	-	-	1,5385
65	-	-	1,5385
	<u>100.0000</u>	<u>100.0000</u>	<u>100.0000</u>

Column "(a)" above denotes the percentage of undivided interest in the common area appurtenant to each residence constructed or to be constructed within Phase I during such time as Phase I only is subject to this Declaration.

Column "(b)" above denotes the percentage of undivided interest in the common area appurtenant to each residence constructed or to be constructed within Phases I and II during such time, if any, as Phases I and II only are subject to this Declaration.

Column "(c)" above denotes the percentage of undivided interest in the common area appurtenant to each residence constructed or to be constructed within Phases I, II and III during such time, if any, as Phases I, II and III are subject to this Declaration.

Should any contiguous property be submitted to the terms of this Declaration, the percentages enumerated in the above columns shall be altered on the basis that all residences so involved shall have an equal percentage of undivided interest (except remote decimals as determined by Declarant to make all percentages equal 100 per centum).

NOTE: The percentages of undivided interest in the common area appurtenant to each residence now or hereafter made subject to this Declaration, including those to be constructed on any contiguous property submitted to this Declaration, is based on relative values arbitrarily assigned by the Declarant to each such residence solely for this purpose. The value thus assigned to each such residence is \$50,000 and, therefore, the aggregate of all such values is: \$800,000 as to Phase I only; \$1,600,000 as to Phases I and II; and \$3,250,000 as to Phases I, II and III. The values so assigned to each residence to be constructed on any contiguous property shall again be enumerated in the Amendment to the Declaration submitting the same to the terms of this Declaration. Such values do not necessarily reflect or represent the selling price or actual value of any such residence and no opinion, appraisal, sale or market value transaction at a greater or lesser price than the assigned value recited herein shall be interpreted as requiring or permitting any change in the percentages of undivided interest assigned herein.

ARTICLES OF INCORPORATION  
OF  
THE HERITAGE HOMEOWNER'S ASSOCIATION, INC.  
A Not-for-Profit Corporation

I, the undersigned incorporator, hereby form and establish a corporation not-for-profit under the laws of the State of Kansas.

FIRST: The name of the corporation is THE HERITAGE HOMEOWNER'S ASSOCIATION, INC.

SECOND: The location of its registered office in the State of Kansas is 1600 Vickers-KSB&T Building, Wichita, Kansas, and the name of its resident agent at such address is Willard B. Thompson.

THIRD: This corporation is organized not-for-profit and the nature of its business is:

(a) To engage in the administration of The Heritage, a condominium development under the Kansas Apartment Ownership Act, and to do all things in any way related or incidental thereto.

(b) To engage in any lawful act or activity for which corporations may be organized under the general corporation code of Kansas and to have and to exercise all powers conferred by the laws of Kansas as now in effect or as hereafter amended.

FOURTH: The corporation shall have no authority to issue stock and the conditions of membership in the corporation shall be as set forth in the By-Laws.

FIFTH: The name and mailing address of the incorporator is N. Lee Aronfeld, 5900 East Central, Wichita, Kansas 67208.

SIXTH: These Articles of Incorporation may be amended upon the vote of a majority of a quorum of the members of the corporation.

IN WITNESS WHEREOF, the undersigned incorporator has subscribed his name this \_\_\_\_ day of August, 1972.

\_\_\_\_\_  
N. LEE ARONFELD

STATE OF KANSAS        )  
                          ) ss:  
COUNTY OF SEDGWICK )

Personally appeared before me, a Notary Public in and for Sedgwick County, Kansas, the above named N. LEE ARONFELD, personally known to me to be the same person who executed the foregoing instrument of writing, and duly acknowledged the execution of the same.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed my official seal this \_\_\_\_ day of August, 1972.

\_\_\_\_\_  
Notary Public

My Commission Expires:

BY-LAWS  
OF  
THE HERITAGE HOMEOWNER'S ASSOCIATION, INC.

ARTICLE I  
NAME AND LOCATION

Section 1. Name. The name of the association is The Heritage Homeowner's Association, Inc., hereinafter referred to as the "Association".

Section 2. Location. Meetings of members and directors may be held at such places within the State of Kansas, County of Sedgwick, as may be designated from time to time by the Board of Directors.

ARTICLE II  
DEFINITIONS

Section 1. Act means the Apartment Ownership Act found in Kansas Statutes Annotated, in Chapter 58 at Article 31.

Section 2. Assessment means a member's share of the common expenses which from time to time is assessed against a member by the Association in the manner provided for in the Declaration.

Section 3. Association means The Heritage Homeowner's Association, Inc., its successors and assigns, acting on behalf of the members for the purpose of administering The Heritage.

Section 4. Common Areas and Facilities means that portion of the property as designated in the Declaration for the common use and enjoyment of the members but shall not include any portion of the property on which residences have been or shall be constructed.

Section 5. Declarant means Leisure Living, Inc., a Kansas corporation, its successors and assigns, having its principal office at 5900 East Central, Wichita, Kansas 67208.

Section 6. Declaration means the Declaration of Covenants, Conditions and Restrictions applicable to the property which shall be recorded in the Office of the Register of Deeds, Sedgwick County, Kansas.

Section 7. Development means the entire undertaking pursuant to the Declaration and these By-Laws which shall commence with the filing of the Declaration and continue thereafter until terminated as provided for therein.

Section 8. Owner means the record owner, whether one or more persons, of a fee simple title to any residence which is a part of the property and an undivided interest in the fee simple estate of the common areas and facilities, excluding, however, those persons having such interest merely as security for the performance of an obligation.

Section 9. Person means an individual, corporation, partnership, association, trustee or other legal entity.

Section 10. Property unless the context should otherwise require, means those tracts or parcels of land described in the Declaration now or hereafter submitted to the provisions of the Act by means of the Declaration or any duly authorized amendment thereof.

Section 11. Residence means a single family residential unit constructed or to be constructed as part of a residential building which contains two or more of such single family residential units.

### ARTICLE III

#### MEMBERSHIP AND VOTING RIGHTS

Section 1. Membership. Every person who is the record owner of a fee or undivided fee interest in any residence which is a part of the property and which is or may become subject by covenants of record to assessment by the Association shall be a member of the Association. The foregoing is not intended to include persons who hold an interest merely as security for the performance of an obligation. No owner, whether one or more persons, shall have more than one membership per residence. Membership shall be appurtenant to and may not be separated from ownership of any residence. Ownership of a residence shall be the sole qualification for membership.

Section 2. Voting Rights. The Association shall have one class of voting membership which shall consist of all members including the Declarant. Such members shall be entitled to one vote for each residence in which they hold the interest required for membership by Section 1 of this Article III. When more than one person holds such interest in any residence the vote for such residence shall be exercised as they among themselves determine. In no event shall more than one vote be cast with respect to any residence.

Section 3. Suspension of Membership and Voting Rights. During any period in which a member shall be in default in the payment of any annual or special assessment levied by the Association, the voting rights and right to use of the recreational facilities, if any, of such member may be suspended by the Board of Directors until such assessment has been paid. Such rights of a member may also be suspended, for a period not to exceed 30 days for violation of any rules and regulations established by the Board of Directors governing the use of the common areas and facilities.

ARTICLE IV

PROPERTY RIGHTS: RIGHTS OF ENJOYMENT

Section 1. Delegation of Rights. Each member shall be entitled to the use and enjoyment of the common areas and facilities as provided in the Declaration. Any member may delegate his rights of enjoyment of the common areas and facilities to the members of his family or his tenants who reside on the property. Such member shall notify the secretary in writing of the name of any such tenant. The rights and privileges of any such delegee are subject to suspension to the same extent as those of the member.

Section 2. Admission Fees. Irrespective of the fact that the Declaration gives the Association the right to charge reasonable admission and other fees for the use of any recreational facilities situated upon the common areas and facilities, this right shall not be exercised as to members for a period of one year from the date of the recordation of the Declaration, and after this period, only upon the approval of at least two-thirds (2/3rds) of the entire membership.

ARTICLE V

BOARD OF DIRECTORS: SELECTION: TERM OF OFFICE

Section 1. Number. From and after the first annual meeting of members, the affairs of the Association shall be managed by three (3) directors, each of whom shall be a member of the Association (except that an officer, stockholder or director of any corporate member may serve as a director).

Section 2. Election. At the first annual meeting the members shall elect three directors, the terms of whom shall be for one, two and three years respectively. At all subsequent annual meetings the members shall elect the director for a term of three years to succeed the director whose term has just expired. Nothing herein provided shall prevent the election of a director to succeed himself.

Section 3. Removal. Any director may be removed from the board, with or without cause, by a majority vote of the members of the Association. In the event of death, resignation or removal of a director, his successor shall be selected by the remaining members of the Board and shall serve for the unexpired term of his predecessor.

Section 4. Compensation. No director shall receive compensation for any service he may render to the Association. However, any director may be reimbursed for his actual expenses incurred in the performance of his duties.

Section 5. Action Taken Without a Meeting. The directors shall have the right to take any action in the absence of a meeting which they could take at a meeting by obtaining the written approval of all the directors. Any action so approved shall have the same effect as though taken at a meeting of the directors.

ARTICLE VI  
MEETINGS OF DIRECTORS

Section 1. Regular Meetings. Commencing with the month following that in which the first annual meeting of members takes place, regular meetings of the Board of Directors shall be held once a month without notice (except to any Management Agent, who shall be entitled to at least 72 hours advance notice of any such meeting) at such place and hour as may be fixed from time to time by resolution of the Board. Should said meeting fall upon a legal holiday, then that meeting shall be held at the same time on the next day which is not a legal holiday.

Section 2. Special Meetings. Special meetings of the Board of Directors shall be held when called by the president of the Association, or by any two directors, after not less than two days notice to each director.

Section 3. Quorum. A majority of the number of directors shall constitute a quorum for the transaction of business. Except as otherwise expressly provided, every act or decision done or made by a majority of the directors present at a duly held meeting at which a quorum is present shall be regarded as the act of the Board.

ARTICLE VII  
NOMINATION AND ELECTION OF DIRECTORS

Section 1. Nomination. The first Board of Directors shall be elected at the first annual meeting of members and nominations therefor shall be made only from the floor. Thereafter, nominations for election to the Board of Directors shall be made by a Nominating Committee. Nominations may also be made from the floor at the annual meeting. The Nominating Committee shall consist of a Chairman, who shall be a member of the Board of Directors and two or more members of the Association. The Nominating Committee shall be appointed by the Board of Directors prior to each annual meeting of the members to serve from the close of such annual meeting until the close of the next annual meeting, and such appointment shall be announced at each annual meeting. The Nominating Committee shall make as many nominations for election to the Board of Directors as it shall in its discretion determine, but not less than the number of vacancies that are to be filled. Such nominations shall be made from among the members of the Association.

Section 2. Election. Election to the Board of Directors shall be by secret written ballot cast at the annual meeting. At such election the members or their proxies may cast, in respect to each vacancy, as many votes as they are entitled to exercise under the provisions of the Declaration. The persons receiving the largest number of votes shall be elected. Cumulative voting is not permitted.

ARTICLE VIII

POWERS AND DUTIES OF THE BOARD OF DIRECTORS

Section 1. Powers. The Board of Directors shall have power:

(a) To adopt and publish and to thereafter amend rules and regulations governing the use of the common areas and facilities and the personal conduct of the members and their guests thereon, and to establish penalties for the infraction thereof;

(b) To exercise for the Association all powers, duties and authority vested in or delegated to the Association not reserved to the membership by other provisions of these By-Laws or the Declaration;

(c) To declare the office of a member of the Board of Directors to be vacant in the event such member shall be absent from three consecutive regular meetings of the Board of Directors; and

(d) To enter into management agreements with third parties in order to facilitate efficient operation of the development, as authorized by the Declaration. It shall be the primary purpose of such management agreements to provide for the administration of the development, the maintenance, repair, replacement and operation of the common areas and facilities, the roof surfaces (shingles) and exterior building surfaces of the residences, and the receipt and disbursement of funds as may be authorized by the Board of Directors. The terms of said management agreements shall be as determined by the Board of Directors to be in the best interests of the Association and shall be subject in all respects to the By-Laws and the Declaration.

Section 2. Duties. It shall be the duty of the Board of Directors:

(a) To cause to be kept a complete record of all its acts and affairs and to present a statement thereof to the members at the annual meeting of the members or at any special meeting, when such statement is requested in writing by at least one-fourth (1/4th) of the members who are entitled to vote;

(b) To supervise all officers, agents and employees of this Association, and to see that their duties are properly performed;

(c) As more fully provided in the Declaration:

(1) to fix the amount of the annual assessment against each residence in advance of each annual assessment period; and

(2) to deliver written notice of each assessment to each residence or send written notice of each assessment to every member subject thereto in advance of each annual assessment period;

(d) To issue, or to cause its duly authorized agent or an appropriate officer to issue, upon demand by a member at any time a certificate setting forth whether the assessments on such member's residence have been paid. A reasonable charge may be made by the Board for the issuance of these certificates. Such certificates shall be conclusive evidence of payment of any assessment therein stated to have been paid.

(e) To procure and maintain insurance and perform all functions related thereto as provided for and in accordance with the terms of the Declaration.

(f) To cause all officers or employees having fiscal responsibilities to be bonded as it may deem appropriate;

(g) To cause the common areas and facilities to be maintained;

(h) To cause the roof surfaces and exterior building surfaces of the residences to be maintained;

(i) To employ or cause to be employed such personnel and agents and experts as shall be required for the proper administration and operation of the development; and

(j) To perform or cause to be performed such other duties and functions as are required or authorized (either expressly or by implication) in the Declaration.

#### ARTICLE IX

##### COMMITTEES

Section 1. Appointment. The Association may appoint an Architectural Control Committee as provided in the Declaration and shall appoint a Nominating Committee as provided in these By-Laws. In addition, the Board of Directors may appoint other committees as deemed appropriate in carrying out its purposes, such as:

A. A Recreation Committee which shall advise the Board of Directors on all matters pertaining to the recreational program and activities of the Association and shall perform such other functions as the Board, in its discretion, determines;

B. A House and Grounds/Architectural Control Committee which shall advise the Board of Directors on all matters pertaining to the maintenance, repair or improvement of the development and shall perform such other functions as the Board in its discretion determines;

C. A Publicity Committee which shall inform the members of all activities and functions of the Association and shall, after consulting with the Board of Directors, make such public releases and announcements as are in the best interest of the Association; and

D. An Audit Committee which shall supervise the audit of the Association's books and approve the annual budget and statement of income and expenditures to be presented to the membership at its regular annual meeting as provided in Article XI, Section 8(d), hereof. The Treasurer shall be an ex officio member of the Committee.

Section 2. Action on Complaints. It shall be the duty of each committee to receive complaints from members on any matter involving Association functions, duties and activities within its field of responsibility. It shall dispose of such complaints as it deems appropriate or refer them to such other committee, director or officer of the Association as is further concerned with the matter presented.

ARTICLE X  
MEETINGS OF MEMBERS

Section 1. Annual Meetings. The first annual meeting of members shall be called by the Declarant and shall be held at such time as management of the development is delivered by the Declarant to the Association as provided for in the Declaration. Each subsequent regular annual meeting of the members shall be held on the same day of the same month of each year thereafter, at the hour of 8:00 o'clock P.M., unless otherwise provided by the members at any previous meeting. If the day for the annual meeting of the members is a legal holiday, the meeting will be held at the same hour on the first day following which is not a legal holiday.

Section 2. Special Meetings. Special meetings of the members may be called at any time by the president or by the Board of Directors, or upon written request of the members who are entitled to vote at least one-half (1/2) of the votes of the membership.

Section 3. Notice of Meetings. Unless otherwise provided by law, written notice of each meeting of the members shall be given by, or at the direction of, the secretary or person authorized to call the meeting (a) by delivering a copy of such notice to each residence at least 10 days before such meeting, or (b) by mailing a copy of such notice, postage prepaid, at least 15 days before such meeting to each member entitled to vote thereat, addressed to the member's address last appearing on the books of the Association, or supplied by such member to the Association for the purpose of notice. Such notice shall specify the place, day and hour of the meeting and, in the case of a special meeting, the purpose of the meeting.

Section 4. Quorum. The presence at the meeting of members entitled to cast, or of proxies entitled to cast, at least one-fifth (1/5th) of the votes of the membership shall constitute a quorum for any action except as otherwise provided in the Declaration or these By-Laws. If, however, such quorum shall not be present or represented at any meeting, the members entitled to vote thereat shall have the power to adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum as aforesaid shall be present or be represented.

Section 5. Proxies. At all meetings of members, each member may vote in person or by proxy in which the designated representative is another member or a member's spouse. All proxies shall be in writing and filed with the secretary. Every proxy shall be revocable and shall automatically cease upon conveyance by a member of his residence.

Section 6. Consent of Members in Lieu of Meeting. Any action required or permitted to be taken at any meeting of members may be taken without a meeting, prior notice or a vote, if a written consent, setting forth the action so taken, shall be signed by the members having not less than the minimum number of votes that would be necessary to take such action at a meeting at which all members entitled to vote thereon were present and voted. Prompt notice of the taking of such corporate action shall be given to those members who have not executed said written consent.

ARTICLE XI  
OFFICERS AND THEIR DUTIES

Section 1. Enumeration of Officers. The officers of this Association shall be a president and vice president, who shall at all times be members of the Board of Directors, a secretary, a treasurer, and such other officers as the Board may from time to time by resolution create.

Section 2. Election of Officers. The election of officers shall take place at the first meeting of the Board of Directors following each annual meeting of the members.

Section 3. Term. The officers of this Association shall be elected annually by the Board and each shall hold office for one year unless he shall sooner resign, or shall be removed, or otherwise disqualified to serve.

Section 4. Special Appointments. The Board may elect such other officers as the affairs of the Association may require, each of whom shall hold office for such period, have such authority, and perform such duties as the Board may, from time to time, determine.

Section 5. Resignation and Removal. Any officer may be removed from office with or without cause by the Board. Any officer may resign at any time by giving written notice to the Board, the president or the secretary. Such resignation shall take effect on the date of receipt of such notice or at any later time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Section 6. Vacancies. A vacancy in any office may be filled in the manner prescribed for regular election. The officer elected to such vacancy shall serve for the remainder of the term of the officer he replaces.

Section 7. Multiple Offices. The offices of secretary and treasurer may be held by the same person. No person shall simultaneously hold more than one of any of the other offices except in the case of special offices created pursuant to Section 4 of this Article XI.

Section 8. Duties. The duties of the officers are as follows:

(a) President. The president shall preside at all meetings of the Board of Directors; shall see that orders and resolutions of the Board are carried out; shall sign all written instruments regarding the common areas and facilities and shall co-sign all checks and promissory notes, if any.

(b) Vice-President. The vice-president shall act in the place and stead of the president in the event of his absence, inability or refusal to act, and shall exercise and discharge such

other duties as may be required of him by the Board.

(c) Secretary. The secretary shall record the votes and keep the minutes of all meetings and proceedings of the Board and of the members; keep appropriate current records showing the members of the Association together with their addresses, and shall perform such other duties as may be required of him by the Board.

(d) Treasurer. The treasurer shall receive and deposit in appropriate bank accounts all monies of the Association and shall disburse such funds as directed by resolution of the Board of Directors; shall co-sign all checks and promissory notes of the Association; keep proper books of account; cause an annual audit of the Association books to be made by a public accountant at the completion of each fiscal year; and shall prepare an annual budget and a statement of income and expenditures to be presented to the membership at its regular annual meeting, and deliver a copy of each to the members.

## ARTICLE XII

### BOOKS AND RECORDS

Section 1. Inspection. The Declaration, By-Laws, books, records and papers of the Association shall at all times, during reasonable business hours, be subject to inspection by any member.

## ARTICLE XIII

### ASSOCIATION SEAL

Section 1. Description. The Association shall have a seal in circular form having within its circumference the words: "The Heritage Homeowner's Association, Inc."

## ARTICLE XIV

### AMENDMENTS

Section 1. Procedure. These By-Laws may be amended, at a regular or special meeting of the members, by a vote of a majority of a quorum of members present in person or by proxy, except that any such amendment shall become effective only when set forth in a duly adopted and recorded amendment to the Declaration as required by the Act.

Section 2. Conflicts. In the case of any conflict between the Declaration and these By-Laws, the Declaration shall control.

ARTICLE XV

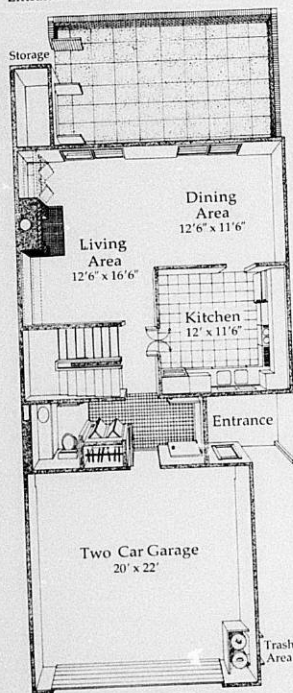
MISCELLANEOUS

Section 1. Fiscal Year. The fiscal year of the Association shall begin on the 1st day of January and end on the 31st day of December of every year, except that the first fiscal year shall begin on the date on which the Declaration is filed for record in the Office of the Register of Deeds, Sedgwick County, Kansas.

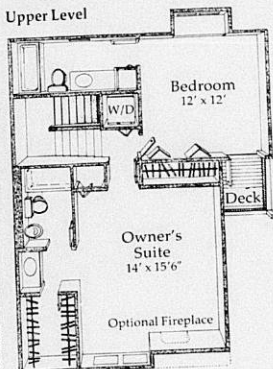
Section 2. Waiver of Notice. Any member, director or officer of the corporation may waive any notice required by law or these By-Laws to be given.

## The Essex

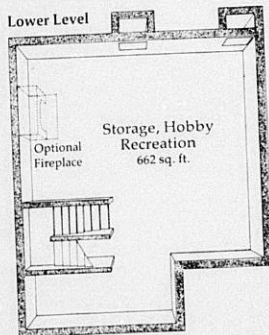
Entrance Level



Upper Level



Lower Level



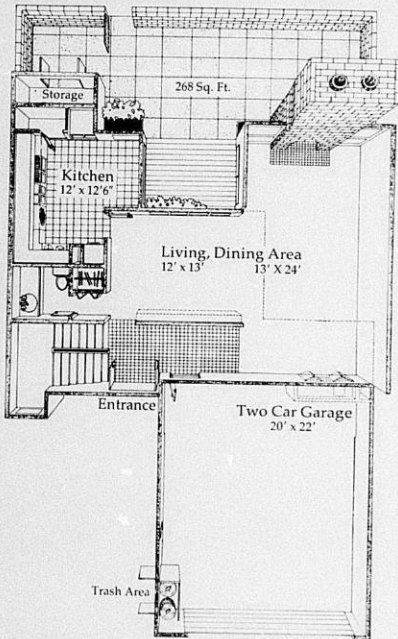
Living Area	1470 Sq. Ft.
Lower Level Area	662 Sq. Ft.
Garage	440 Sq. Ft.
Patio, Deck, Ext. Stor.	60 Sq. Ft.
<b>Total Area</b>	<b>2632 Sq. Ft.</b>

2 bedrooms  
2 baths  
enclosed private patio garden  
heavy, carved double entry doors  
entrance level powder room  
woodburning fireplace  
all-electric kitchen  
continuous self-cleaning double wall ovens  
breakfast area in kitchen  
electric garage door opener  
intercom security system

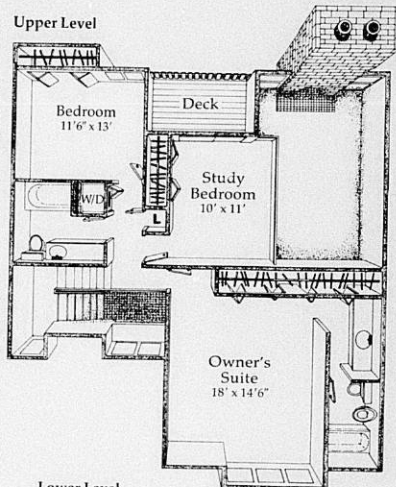
optional fireplace in owner's suite  
window seat in second bedroom  
private bath in second bedroom  
extra large master bath including bidet  
deck area off study/bedroom  
full-size basement/lower level  
abundant storage, including outside storage  
area  
oversized 2-car garage with window  
lockable refuse area in garage for inside/outside  
access

## The Americana

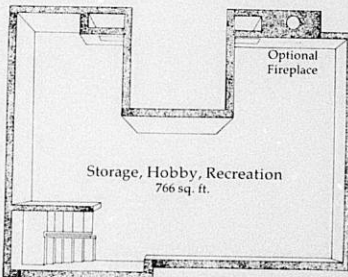
Entrance Level



Upper Level



Lower Level



2 bedrooms; one study/bedroom  
2½ baths

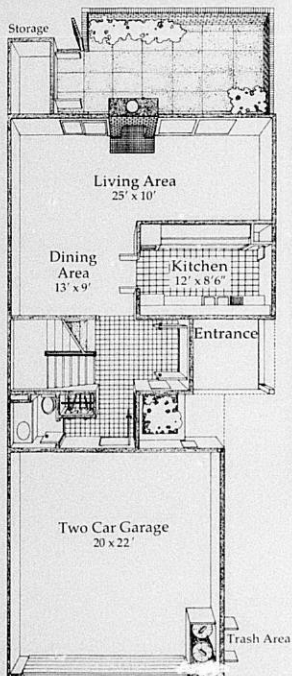
enclosed private patio garden  
heavy, carved double entry doors  
exciting foyer area exposed to ceiling  
entrance level powder room  
vaulted ceiling  
woodburning fireplace  
electric garage door opener  
intercom security system  
all-electric kitchen  
continuous self-cleaning double wall ovens  
carpeted throughout  
extra large master bath including bidet  
deck area off study/bedroom

study/bedroom overlooks 2-story livingroom  
full-size basement/lower level  
abundant storage, including outside storage area  
oversized 2-car garage with window  
lockable refuse area in garage for inside/outside access

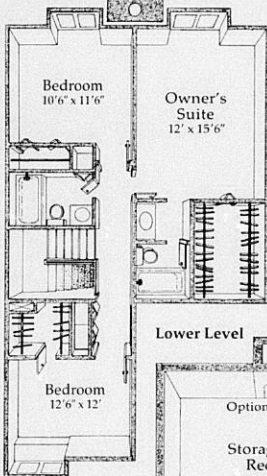
Living Area	1898 Sq. Ft.
Lower Level Area	766 Sq. Ft.
Garage	440 Sq. Ft.
Patio, Deck, Ext. Stor.	166 Sq. Ft.
Total Area	3270 Sq. Ft.

## The Dorchester

### Entrance Level



### Upper Level



Living Area	1627 Sq. Ft.
Lower Level Area	618 Sq. Ft.
Garage	440 Sq. Ft.
Patio, Ext. Stor.	32 Sq. Ft.
<b>Total Area</b>	<b>2717 Sq. Ft.</b>

### Lower Level

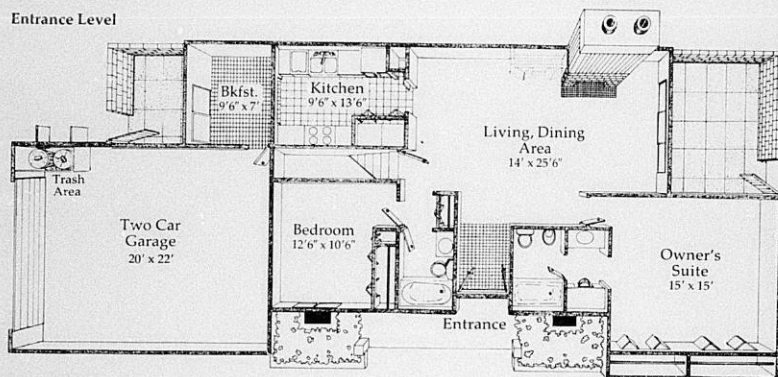


3 bedrooms  
2½ baths  
enclosed private patio garden  
heavy, carved double entry doors  
windowed courtyard entry  
guest/entry closet  
entrance level powder room  
woodburning fireplace  
all-electric kitchen  
alternate: kitchen arrangement  
continuous self-cleaning double wall ovens  
pantry

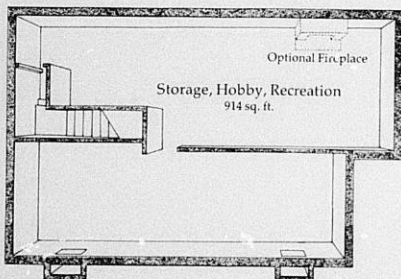
master bedroom with extra large walk-in closet  
window seat in master bedroom  
bay window in master and second bedrooms  
full-size basement/lower level  
carpeted throughout  
abundant storage, including outside storage area  
oversized 2-car garage with window  
lockable refuse area in garage for inside/outside access  
electric garage door opener  
intercom security system

## The Bristol

### Entrance Level



### Lower Level



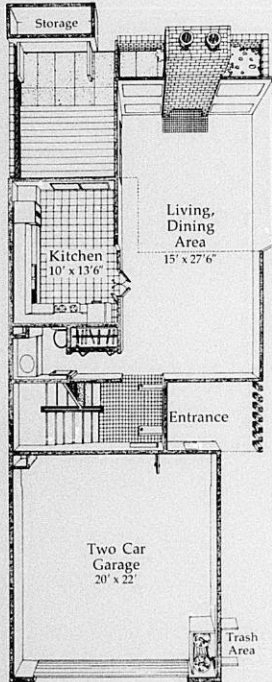
Living Area	1332 Sq. Ft.
Lower Level Area	914 Sq. Ft.
Garage	440 Sq. Ft.
<b>Total Area</b>	<b>2686 Sq. Ft.</b>

- 2 bedrooms
- 2 baths
- all one level
- enclosed private patio gardens
- heavy, carved double entry doors
- brass dead-bolt locks
- guest/entry closet
- vaulted ceiling
- woodburning fireplace
- electric garage door opener
- intercom security system
- all-electric kitchen
- continuous self-cleaning double wall ovens

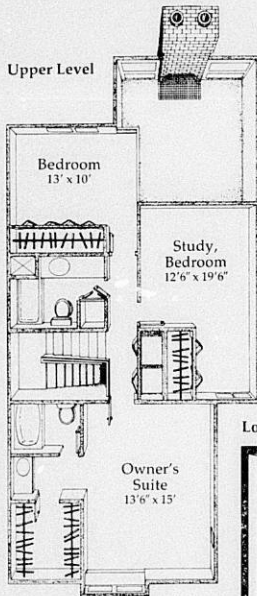
- pantry
- skylighted breakfast room with separate breakfast garden
- large owner's suite opening onto patio
- separate marble dressing table in dressing area
- extra large master bath including bidet
- full-size basement/lower level carpeted throughout
- abundant storage
- oversized 2-car garage with window
- lockable refuse area in garage for inside/outside access

## The Concord

### Entrance Level

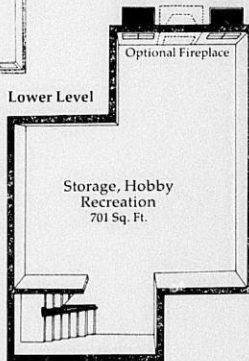


### Upper Level



Living Area	1831 Sq. Ft.
Lower Level Area	701 Sq. Ft.
Garage	440 Sq. Ft.
Patio, Deck, Ext. Stor.	127 Sq. Ft.
<b>Total Area</b>	<b>3099 Sq. Ft.</b>

### Lower Level



2 bedrooms; one study/bedroom  
2½ baths  
enclosed private patio garden  
heavy, carved double entry doors  
entrance level powder room  
vaulted ceiling  
woodburning fireplace  
all-electric kitchen  
continuous self-cleaning double wall ovens  
electric garage door opener  
intercom security system

breakfast area in kitchen  
pantry  
large owner's suite  
study/bedroom overlooks 2-story livingroom  
alternate: outside deck on upper level  
full-size basement/lower level  
carpeted throughout  
abundant storage, including outside storage area  
oversized 2-car garage with window  
lockable refuse area in garage for inside/outside access



**COSSEN LIVINGSTON ASSOCIATES**  
 ARCHITECTS  
 100 WEST 42ND STREET  
 NEW YORK, N.Y. 10018  
 (212) 869-1000

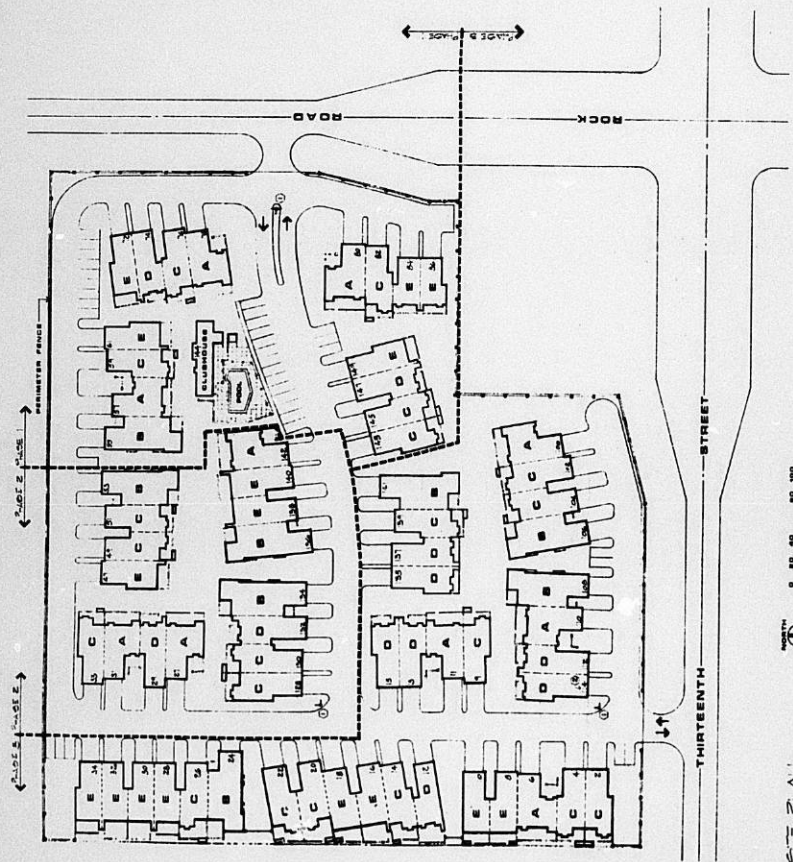
DEVELOPED BY



STIPAN

DATE	NO.	BY	REVISION

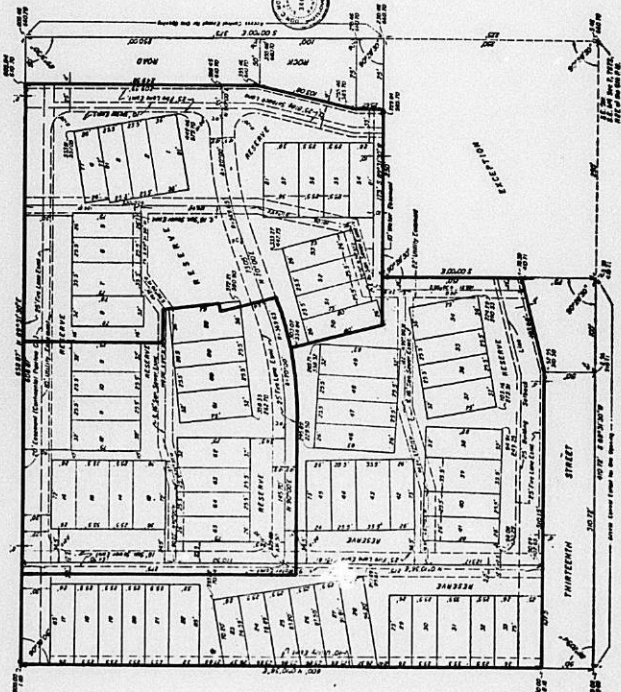
UNIT NO.	AREA (SQ. FT.)	PRICE
A	1,100	\$110,000
B	1,100	\$110,000
C	1,100	\$110,000
D	1,100	\$110,000
E	1,100	\$110,000
F	1,100	\$110,000
G	1,100	\$110,000
H	1,100	\$110,000
I	1,100	\$110,000
J	1,100	\$110,000
K	1,100	\$110,000
L	1,100	\$110,000
M	1,100	\$110,000
N	1,100	\$110,000
O	1,100	\$110,000
P	1,100	\$110,000
Q	1,100	\$110,000
R	1,100	\$110,000
S	1,100	\$110,000
T	1,100	\$110,000
U	1,100	\$110,000
V	1,100	\$110,000
W	1,100	\$110,000
X	1,100	\$110,000
Y	1,100	\$110,000
Z	1,100	\$110,000



SEE PLAN

NOTES:  
 1. ALL UNITS ARE TO BE BUILT.  
 2. ALL UNITS ARE TO BE BUILT TO THE FULL HEIGHT.

**LEISURE LIVING FIRST ADDITION**  
TO WICHITA, SEDGWICK COUNTY, KANSAS



STATE OF KANSAS, COUNTY OF SEDGWICK, MO.  
 I, the undersigned, being a duly qualified and sworn Notary Public for the State of Kansas, do hereby certify that the foregoing is a true and correct copy of the original of the same as the same appears from the records of my office.  
 My Comm. Expires Jan 1, 1934  
 Notary Public  
 State of Kansas



STATE OF KANSAS, COUNTY OF SEDGWICK, MO.  
 I, the undersigned, being a duly qualified and sworn Notary Public for the State of Kansas, do hereby certify that the foregoing is a true and correct copy of the original of the same as the same appears from the records of my office.  
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 Notary Public  
 State of Kansas

OUTLINE SPECIFICATION

Drives and parking:	Concrete and asphalt paving.
Walks:	Concrete and brick paving.
Footings and foundations:	Reinforced concrete.
Lower floor:	Reinforced concrete slab.
Upper floors:	Wood joists, 3/4" or 5/8" plywood subfloor.
Roof:	Wood trusses or rafters with plywood sheathing.
Exterior walls:	Wood studs, wood exterior siding, gypsum board interior.
Interior partitions:	Wood stud, gypsum board.
Exterior finishes:	Stained rough sawn texture 1-11 plywood, brick.
Roofing:	Cedar shakes or shingles.
Thermal insulation:	Fiberglass batt and loose insulation.
Flashing, gutter, downspouts:	Galvanized metal, painted.
Exterior doors:	Wood door and frame.
Interior doors:	Wood hollow core, painted.
Bifold doors:	Wood or metal louvred.
Windows:	Aluminum or wood, painted.
Fireplaces:	Masonry or pre-built metal.
Interior finishes:	Ceilings - textured gypsum board Walls - papered or painted gypsum board Floors - carpet, sheet vinyl, quarry tile and stone.

Kitchen appliances:

Electric range, self-cleaning  
ovens, range hood, disposals  
and dishwasher.

Accessories:

Interior - exterior intercom.  
Electric garage door operators.  
Wood cutting board.  
Door chimes.  
Door peep hole.  
Bathroom heat lamps.

Cabinets:

Painted wood, factory fabricated;  
plastic laminate countertops.

Water piping:

Copper.

Waste lines:

ABC plastic/cast iron.

Sewer lines:

Vitrified clay pipe.

Heating and Air Conditioning:

Forced air, individual furnace  
with cooling coil for each  
unit. Metal ductwork for  
air distribution.

Electrical distribution:

Underground.

RULES AND REGULATIONS  
FOR  
THE HERITAGE HOMEOWNER'S ASSOCIATION, INC.

---

1. No owner shall make or permit any noises or similar offensive circumstance that will disturb or annoy the occupants of any of the residences or do or permit anything to be done which will interfere with the rights, comfort or convenience of other owners.
2. The owners must keep the interior of the patios, courtyards and garages clean and free from obstructions. Nothing shall be hung in the patios or courtyards above fence lines, without the express written consent of the Association, which consent may be withheld on purely aesthetic grounds within the sole discretion of the Association.
3. Any damage to the buildings, recreational facilities or other common areas of facilities caused by any resident or his guests or tenants shall be repaired at the expense of the owner.
4. The walkways and driveways in front of residences and the entrances to them shall not be obstructed or used for any purpose other than ingress to and egress from the residences.
5. The exterior of the residences, including exterior doors and windows, and the patios, boundary walls, fences, garages, courtyards, storage areas, and all other areas appurtenant to a residence shall not be painted, decorated, or modified by the owner in any manner whatsoever without prior consent of the Association, which consent may be withheld on purely aesthetic grounds within the sole discretion of the Association.
6. No article shall be hung or shaken from the doors or windows or placed upon the outside window sills of the residences.
7. Each owner shall keep such residence in a good state of preservation and cleanliness and shall not sweep or throw or permit to be swept or thrown therefrom, or from the doors or windows thereof, any dirt or other substance.
8. No awnings, window guards, light reflective materials, storm windows and shutters, ventilators, fans or air conditioning devices shall be used in or about the residences except as shall have been approved by the Association, which approval may be withheld on purely aesthetic grounds within the sole discretion of the Association.
9. Nothing shall be projected out of any window in the residences without prior written approval from the Association.
10. All garbage and refuse from the residences shall be deposited with care in garbage containers and areas intended for such purpose. All disposals shall be used in accordance with instructions given to the owner by the Association.
11. Waterclosets and other water apparatus in the buildings shall not be used for any purposes other than those for which they were constructed. Any damage resulting to any watercloset or other plumbing apparatus shall be paid for by the owner in whose residence it shall have been caused.

12. No owner shall request or cause any employee of the Association to do any private business of the owner, except as shall have been approved in writing by the Association.
13. In no event shall pets be permitted in any of the public portions of the development, and only in such places as may from time to time be designated by the Association. No owner shall be permitted to have more than two dogs nor more than two cats in his residence. The owner shall indemnify the Association and hold it harmless against any loss or liability of any kind or character whatsoever arising from or growing out of having any animal in the development.
14. The agents of the Association and any contractor or workman authorized by the Association may enter any residence, patio, courtyard or garage at any reasonable hour of the day for any purpose permitted under the terms of the Declaration, or By-Laws of the Association. Except in case of emergency, entry will be made by prearrangement with the owner.
15. No vehicle belonging to an owner, or to a member of the family or guest, tenant or employee of an owner, shall be parked in such manner as to impede or prevent ready access to another owner's garage. The owners, their employees, servants, agents, visitors, licensees and the owner's family will obey the parking and driving regulations posted at the private streets, parking areas, and drives and any other traffic regulations promulgated in the future for the safety, comfort and convenience of the owners. All garage doors shall at all times remain closed, except to afford access to and from the garage. No vehicle which cannot operate on its own power shall remain on any of the common property for more than twenty-four (24) hours, and no repair of vehicles shall be made within the property.
16. The owner shall not cause or permit the blowing of any horn from any vehicle of which his guests or family shall be occupants, approaching, or upon, any of the driveways or parking areas serving the property.
17. An owner must not use nor permit his guests or members of his family to use driveways appurtenant to other residences.
18. The owners shall not be allowed to put their names on any entry of the residences or mail receptacles appurtenant thereto, except in the proper places and in the manner prescribed by the Association for such purpose.
19. No bicycles, scooters, carriages or similar vehicles or other personal articles shall be allowed to stand in any of the common areas or driveways or walkways.
20. Owners shall be held responsible for the actions of their children and guests, invitees, agents and servants.
21. Recreational activities shall be allowed only in those areas designated therefor from time to time by the Association.
22. Food and beverage may not be prepared or consumed on the common areas, except in accordance with regulations which may be promulgated from time to time by the Association.
23. No boats, boat trailers, campers, trailers or other similar vehicles may be left in a residence driveway, common area parking space, roadway, or any other place in the development for more than 24 hours. Notice is hereby given that said vehicles shall be towed from the development at the sole cost and expense of vehicle owner upon violation of said regulation.

24. Without the prior written consent and approval of the Board of Directors of the Association (which consent and approval may be unreasonably and arbitrarily withheld), no residence may be leased unless the entire residence is covered in the transaction and unless the occupancy is for at least 12 months and such occupancy is only by lessee and his immediate family.

25. Complaints regarding the actions of other owners shall be made in writing to the Association.

26. Any consent or approval given under these Rules and Regulations by the Association shall be revocable at any time.

27. The swimming pool, clubhouse, and recreational areas are solely for the use of the residents, their tenants, and their invited guests. Swimming and the use of other recreational facilities shall be at the risk of those involved and not in any event the risk of the Association or its Manager.

28. The regulations governing the use of the swimming pool, pool area and recreational facilities, permitted hours, guest rules, safety and sanitary provisions, and all other pertinent matters shall be in accordance with regulations adopted from time to time by the Association and posted in the swimming pool and recreational areas.

29. These Rules and Regulations may be modified, added to, or repealed at any time by the Board of Directors of the Association.

MANAGEMENT AGREEMENT

THIS MANAGEMENT AGREEMENT made and entered into as of the day of \_\_\_\_\_, 1972, by and between THE HERITAGE HOMEOWNER'S ASSOCIATION, INC., A Kansas not-for-profit corporation (the "Association"), and LEISURE LIVING, INC., A Kansas corporation (the "Manager").

WITNESSETH:

WHEREAS, the Association has been formed to govern and manage all property (the "Condominium Property") referred to in the Declaration of Covenants, Conditions and Restrictions for The Heritage (the "Declaration"), recorded at Book \_\_\_\_\_, Page \_\_\_\_\_, in the office of the Register of Deeds of Sedgwick County, Kansas, which Condominium Property is comprised of individual residences owned by individual members of the Association and common areas and facilities owned jointly by all of the members; and

WHEREAS, the Association desires Manager to maintain and manage the Condominium Property as hereinafter provided:

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the parties agree as follows:

1. Employment. At such time as Leisure Living, Inc., Declarant in and under the Declaration of Covenants, Conditions and Restrictions for The Heritage above described, delivers management (as Declarant) to The Heritage Homeowner's Association, Inc., in accordance with Article VII of said Declaration, it is agreed that Leisure Living, Inc., shall at once (as Manager hereunder) manage the Condominium Property, for a period of five years thereafter, and, if the Association shall not have given written notice of the termination of this Agreement at least 30 days prior thereto, thereafter for successive periods of 3 years until the Association has given written notice of termination of this Agreement 3 months prior to any triennial anniversary; provided, however, that at any time, upon 60 days written notice to the Association, the Manager may terminate this Agreement.

2. Powers and Duties of Manager. Subject to powers exclusively reserved to the Association by law or the Declaration, all powers of management of the Condominium Property shall be vested in the Manager. Without limiting the generality of the foregoing, the Manager shall:

a. Collect all assessments determined by the Association and, in connection therewith, take all steps deemed advisable by the Manager, in its sole discretion, including enforcing the Association's lien therefor and compromising and settling claims. The Manager shall furnish the Association a list of accounts delinquent as of the 28th day of each month.

b. Employ such persons as it may, in its sole discretion, require to fulfill its duties hereunder.

c. Be notified at least 72 hours in advance of all meetings of the Association, its Board of Directors and any committee thereof and attend such of said meetings as the Manager deems advisable.

d. Perform all maintenance and repair responsibilities imposed upon the Association or its directors in the Declaration and the By-Laws. In this connection, the Manager shall have access at any time to the Common Areas and Facilities of the Condominium Property and at any reasonable time to each residence. The Manager shall, in its sole discretion, approve or disapprove in advance all alterations, additions or other modifications which any residence owner wishes to make to any residence.

e. Cause to be kept in force at all times such insurance as is required by the Declaration and exercise all of the rights, powers and privileges of the Association and each owner of any insured interest in the Condominium Property with respect to such insurance and perform all duties imposed upon the Board of Directors (in their capacity as Insurance Trustee or otherwise) with respect to insurance including (but not limited to) the processing of claims and settlements and the restoring of all damage and destruction as required under the terms of the Declaration; provided that nothing herein shall divest the Directors or the members of the Association from determining whether damage or destruction shall be repaired or reconstructed as provided in the Declaration.

f. Maintain at its office all books and records of the Association; give, when requested by the appropriate officers of the Association, all notices of meetings of the Association, its Board of Directors and any committee thereof; and issue statements of account to members, their mortgagees and lienors without liability for error, unless such error be a result of the Manager's gross negligence or willful misconduct. All books and records of the Association shall be available for inspection at reasonable times by the Association's Directors.

The Manager shall render to the Association, within 90 days after the close of the Association's fiscal year or upon any termination hereof, a statement of the Manager's receipts and disbursements for such period. The Association may, in its discretion and at its expense, have conducted an independent audit by a firm of independent public accountants acceptable to both parties hereto.

g. Deposit all funds accruing to the Association with such federally-insured depository as the Manager may select. The Manager may, subject to the approval of the Board of Directors of the Association, establish reasonable reserves for any Association expenses to be disbursed by the Manager.

h. Submit to the Directors of the Association prior to the commencement of each fiscal year a proposed operating budget for such year which shall include the Manager's plan of operation for such year and an explanation of the estimates used in the budget.

i. Retain, at the expense of the Association, such lawyers, certified public accountants and other professionals or experts as the Manager may, in its sole discretion, deem advisable in the performance of its duties and the exercise of its powers hereunder.

j. Investigate all applications for approval of transfers or leases of residences and make recommendations of approval or disapproval thereof to the Directors of the Association.

ciation for their action. The Manager shall charge the residence owner desiring to convey or lease reasonable fees for said investigation and for the administrative duties involved in any such transfer or lease.

k. Enforce the Rules and Regulations of the Association and supervise and control at all times the common areas and facilities and the recreational facilities of the Association, including determining what activities and programs shall be carried on therein. Subject to the power of the Association to adopt and amend Rules and Regulations, the Manager may from time to time adopt, amend, repeal and enforce such additional Rules and Regulations as it deems advisable concerning the use of the common areas and facilities and recreational facilities and the use and occupancy of the Condominium Property.

l. Enforce all use restrictions as set forth in the Declaration.

m. Exercise all matters involving architectural control as set forth in the Declaration.

n. Exercise all other powers and be responsible for the performance of all other duties of the Board of Directors of the Association as provided for in The Act and the development documents defined in the Declaration, excepting those powers and duties specifically and exclusively assigned to the officers, directors or members of the Association by the Act or the development documents.

3. Assessments. The Association shall maintain a level of monthly assessments sufficient to pay all items set forth in the Declaration, to make disbursements necessary to the proper maintenance of the Condominium Property and to maintain a reasonable reserve fund. The Manager shall not be required to disburse its own funds for such purposes. The Association shall provide the Manager with all assistance reasonably requested by the Manager in collecting assessments due from residence owners.

4. Manager's Compensation. The Manager shall receive, as its compensation for services performed under this Agreement, six percent (6%) of all assessments levied by the Association and the Manager shall be reimbursed by the Association for all costs and expenses incurred by the Manager in connection with its performance hereunder.

5. Residences. The Manager may, in its sole discretion, perform such maintenance and repair services on any individual residence as may be requested by the Owner thereof and may charge a fee therefor in addition to other sums payable to the Manager hereunder, which fee, if unpaid, may be enforced by the imposition of a lien as provided in the Declaration.

6. Exculpation. The Association does hereby indemnify and save harmless the Manager and its employees from any claims, causes of action or liabilities arising from any loss, damage or injury to any person or property in, about or in connection with the Condominium Property from any cause, including the negligence of Manager and its employees, unless such injury be caused by Manager's own gross negligence or willful misconduct.

7. Default.

(a) By the Association. If the Association shall breach this Agreement, the Manager may, by 30-days written notice of such breach, declare the Association in default and this Agreement terminated and pursue the remedies it may have in law, such remedies being cumulative and the pursuit of one remedy not being a waiver of any other remedy.

(b) By the Manager. If the Manager shall continue for a period of 30 days after written notice from the Association to be in substantial default in its performance of its obligations hereunder, the Association may, by 10-days written notice, declare the Manager in default and this Agreement terminate and pursue the remedies it may have in law, such remedies being cumulative and the pursuit of one remedy not being a waiver of any other remedy.

8. Assignment. Manager may assign its rights and duties hereunder and thereupon be relieved of any further obligation hereunder; provided, however, that the assignee must have in writing assumed all of the obligations of the Manager hereunder.

9. Applicable Law. The laws of Kansas shall govern the construction and enforcement of this Agreement in all respects.

IN WITNESS WHEREOF, the parties hereto have caused this Management Agreement to be executed as of the date first set forth above.

THE HERITAGE HOMEOWNER'S ASSOCIATION,  
INC. (the "Association")

ATTEST:

By \_\_\_\_\_  
President

\_\_\_\_\_  
Secretary

LEISURE LIVING, INC. (the "Manager")

ATTEST:

By \_\_\_\_\_  
President

\_\_\_\_\_  
Secretary

STATE OF KANSAS )  
 ) SS  
COUNTY OF SEDGWICK )

BE IT REMEMBERED that on this \_\_\_\_\_ day of \_\_\_\_\_, 197 2, before me, the undersigned, a Notary Public, duly commissioned, in and for the county and state aforesaid, came \_\_\_\_\_ and \_\_\_\_\_, of THE HERITAGE HOMEOWNER'S ASSOCIATION, INC., a corporation of the State of Kansas, personally known to me to be the President and Secretary, and to be the same persons who executed as such officers the foregoing instrument of writing in behalf of said corporation, and they duly acknowledged the execution of the same for themselves and for said corporation for the uses and purposes therein set forth.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal on the day and year last above written.

\_\_\_\_\_  
Notary Public

My commission expires:

STATE OF KANSAS )  
 ) SS  
COUNTY OF SEDGWICK )

BE IT REMEMBERED that on this \_\_\_\_\_ day of \_\_\_\_\_, 197 2, before me, the undersigned, a Notary Public, duly commissioned, in and for the county and state aforesaid, came \_\_\_\_\_ and \_\_\_\_\_, of LEISURE LIVING, INC., a corporation of the State of Kansas, personally known to me to be the President and Secretary, and to be the same persons who executed as such officers the foregoing instrument of writing in behalf of said corporation, and they duly acknowledged the execution of the same for themselves and for said corporation for the uses and purposes therein set forth.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal on the day and year last above written.

\_\_\_\_\_  
Notary Public

My commission expires:

WARRANTY DEED

THIS INDENTURE, Made this \_\_\_\_\_ day of \_\_\_\_\_, 197\_\_\_\_, by and between LEISURE LIVING, INC., a Kansas corporation, hereinafter referred to as "Grantor", and

of \_\_\_\_\_, hereinafter referred to as "Grantee(s)".

Grantor, for and in consideration of the sum of ONE DOLLAR and other good and valuable consideration, receipt of which is hereby acknowledged, hereby grants, conveys, warrants and sells unto Grantee(s), \_\_\_\_\_ heirs and assigns forever, the following-described real property:

Residence No. \_\_\_\_\_, Type \_\_\_\_\_, situated on the following described real property in Leisure Living First Addition, Wichita, Sedgwick County, Kansas, to-wit:

according to the recorded plat and/or supplemental plat(s) thereof and to a Declaration executed by Grantor on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, recorded on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, in the Office of the Register of Deeds in Book \_\_\_\_\_ at Page \_\_\_\_\_; together with the undivided interest in common and limited common areas and facilities declared in the declaration to be appurtenant to such residence. Grantee(s) assume(s) and agree(s) to be bound by and to comply with all of the covenants, terms, provisions and conditions set forth in said Declaration and the By-Laws attached thereto, and all amendments thereof.

The property hereby conveyed shall be used exclusively for residential purposes so long as it remains subject to the Apartment Ownership Act of Kansas; and this conveyance is further made subject to the following:

1. Real estate taxes and special assessments for current year and subsequent years.
2. All of the terms, provisions, conditions, rights, privileges, obligations, easements and liens set forth in the Declaration and in the By-Laws thereto attached, and all amendments thereto.
3. Such covenants, conditions, restrictions and easements of record, which now affect said property.
4. The provisions of the Apartment Ownership Act of Kansas.
5. Other (if any):

TO HAVE AND TO HOLD THE SAME, Together with all and singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining forever.

And said Grantor for itself and for its successors and assigns, does hereby covenant, promise, and agree to and with Grantee(s), that at the delivery of these presents it is lawfully seized in its own rights of an absolute and indefeasible estate of inheritance, in fee simple, of and in all and singular the above granted and described premises, with the appurtenances; that the same are free, clear, discharged and unencumbered of and from all former and other grants, titles, charges, estate, judgments, taxes, assessments and encumbrances of what nature and kind soever, except as above stated, and that it will WARRANT AND FOREVER DEFEND the same unto said Grantee(s), \_\_\_\_\_ heirs and assigns, against said Grantor, its successors and assigns, and all and every person or persons whomsoever, lawfully claiming or to claim the same.

IN WITNESS WHEREOF, the said Grantor has hereunto set its hand the day and year first above written.

LEISURE LIVING, INC.

ATTEST:

By \_\_\_\_\_ President

STATE OF KANSAS )  
COUNTY OF SEDGWICK ) SS

BE IT REMEMBERED that on this \_\_\_\_\_ day of \_\_\_\_\_, 197\_\_\_\_, before me, the undersigned, a Notary Public, duly commissioned, in and for the county and state aforesaid, came N. LEE ARONFELD, President of LEISURE LIVING, INC., a corporation of the State of Kansas, personally known to me to be such officer, and to be the same person who executed as such officer the foregoing instrument of writing in behalf of said corporation, and he duly acknowledged the execution of the same for himself and for said corporation for the uses and purposes therein set forth.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal on the day and year last above written.

\_\_\_\_\_  
Notary Public

My commission expires:

WARRANTY DEED - JOINT TENANCY

THIS INDENTURE, Made this \_\_\_\_\_ day of \_\_\_\_\_, 197\_\_\_\_, by and between LEISURE LIVING, INC., A Kansas corporation, hereinafter referred to as "Grantor", and

of \_\_\_\_\_ and \_\_\_\_\_, as joint tenants with right of survivorship and not as tenants in common, hereinafter referred to as "Grantee(s)".

Grantor, for and in consideration of the sum of ONE DOLLAR and other good and valuable consideration, receipt of which is hereby acknowledged, hereby grants, conveys, warrants and sells unto Grantee(s), and the survivor of them, the following-described real property:

Residence No. \_\_\_\_\_, Type \_\_\_\_\_, situated on the following described real property in Leisure Living First Addition, Wichita, Sedgwick County, Kansas, to-wit:

according to the recorded plat and/or supplemental plat(s) thereof and to a Declaration executed by Grantor on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, recorded on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, in the Office of the Register of Deeds in Book \_\_\_\_\_ at Page \_\_\_\_\_; together with the undivided interest in common and limited common areas and facilities declared in the declaration to be appurtenant to such residence. Grantee(s) assume(s) and agree(s) to be bound by and to comply with all of the covenants, terms, provisions and conditions set forth in said Declaration and the By-Laws attached thereto, and all amendments thereof.

The property hereby conveyed shall be used exclusively for residential purposes so long as it remains subject to the Apartment Ownership Act of Kansas; and this conveyance is further made subject to the following:

1. Real estate taxes and special assessments for current year and subsequent years.
2. All of the terms, provisions, conditions, rights, privileges, obligations, easements and liens set forth in the Declaration and in the By-Laws thereto attached, and all amendments thereto.
3. Such covenants, conditions, restrictions and easements of record, which now affect said property.
4. The provisions of the Apartment Ownership Act of Kansas.
5. Other (if any):

TO HAVE AND TO HOLD THE SAME, Together with all and singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining forever, as joint tenants, the survivor to take the whole estate.

And said Grantor for itself and for its successors and assigns, does hereby covenant, promise, and agree to and with Grantee(s), that at the delivery of these presents it is lawfully seized in its own rights of an absolute and indefeasible estate of inheritance, in fee simple, of and in all and singular the above granted and described premises, with the appurtenances; that the same are free, clear, discharged and unencumbered of and from all former and other grants, titles, charges, estate, judgments, taxes, assessments and encumbrances of what nature and kind soever, except as above stated, and that it will WARRANT AND FOREVER DEFEND the same unto said Grantee(s), and the survivor of them, against said Grantor, its successors and assigns, and all and every person or persons whomsoever, lawfully claiming or to claim the same.

IN WITNESS WHEREOF, the said Grantor has hereunto set its hand the day and year first above written.

LEISURE LIVING, INC.

ATTEST:

By \_\_\_\_\_  
President

\_\_\_\_\_

STATE OF KANSAS        )  
                          )    SS  
COUNTY OF SEDGWICK    )

BE IT REMEMBERED that on this \_\_\_\_\_ day of \_\_\_\_\_, 197\_\_, before me, the undersigned, a Notary Public, duly commissioned, in and for the county and state aforesaid, came N. LEE ARONFELD, President of LEISURE LIVING, INC., a corporation of the State of Kansas, personally known to me to be such officer, and to be the same person who executed as such officer the foregoing instrument of writing in behalf of said corporation, and he duly acknowledged the execution of the same for himself and for said corporation for the uses and purposes therein set forth.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal on the day and year last above written.

\_\_\_\_\_  
Notary Public

My commission expires: